Supreme Court, U. S.
FILED
NOV 16 1978
MICHAEL RODAK, JR., CLERK

APPENDIX

VOLUME I — Pages 1 - 305

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 77-1844

CITY OF MOBILE, ALABAMA, *et al.*,

Appellants,

v.

WILEY L. BOLDEN, *et al.*,

Appellees.

ON APPEAL FROM THE UNITED STATES
COURT OF APPEALS FOR THE FIFTH CIRCUIT

JURISDICTIONAL STATEMENT FILED JUNE 27, 1978
PROBABLE JURISDICTION NOTED OCTOBER 2, 1978

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NOTE

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Opinion of the Court of Appeals, entered March 29, 1978 ..... A

Opinion of the District Court, entered October 21, 1976, as amended October 28, 1976 ..... B

Judgment of the District Court C

Order of the District Court, establishing mayor-council government, entered March 9, 1977 ..... D

Order of the District Court, setting November 21, 1978 as conditional date for elections, entered May 31, 1978 ..... E

Alabama Act No. 281 (Acts 1911, p. 330), as amended, Code of Alabama 1975 §§11-44-70 through 11-44-105 (1977) ..... F

Alabama Act No. 823 (Acts 1965, p. 1539) ..... G

Notice of Appeal ..... H

DOCKET - U.S. DISTRICT COURT

INIT. OFFICE	DOCKET YR.	DOCKET NUMBER	FILING DATE MO.	DAY	YEAR	J	NO.	O	R	R 23	8	DEMAND OTHER	JUDGE NUMBER	JURY DEM.	DOCKET YR. NUMBER
528/1	75	297	06	09	75	3	441	1		X			2804		75-297-P

PLAINTIFFS

SET FOR PRE TRIAL ON: 2-4-76

SET FOR TRIAL ON: 7-12-76

DEFENDANTS

Judge Pittman

BOLDEN, WILEY L.
HOPE, REV. R. L.
~~JOHNSON, CHARLES~~ DISMISSED 1-14-76
LEFLORE, JANET O.
LEFLORE, JOHN L.
MAXWELL, CHARLES
PURIFOY, OSSIE B.
SCOTT, RAYMOND
SMITH, SHERMAN
TAYLOR, OLLIE LEE
~~TURNER, ROBNEY O.~~ DISMISSED 1-14-76
WILLIAMS, ED
WILLIAMS, SYLVESTER
WILSON, MRS. F. C.

CITY OF MOBILE, ALABAMA;
GREENOUGH, GARY A.
DOYLE, ROBERT B., JR.
MIMS, LAMBERT C., ind. and in their official capacities as Mobile City Commissioners.

CAUSE

42 USC §§ 1973, 1983 & 1985(3). Acting seeking single-member districts for Mobile City Commission, attacking present "at-large" election system, and for declaratory judgment and injunction against the city holding any further elections under the present at-large election system.

ATTORNEYS

GREGORY B. STEIN
J. U. BLACKSHER
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Mobile, Alabama 36603

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~~Birmingham, Alabama 35203~~
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City of Mobile Legal Dept.
Post Office Box 1827
Mobile, Alabama 36601

INTERVENORS: CHRIS M. ROCOSTAS, JOE SIMMON & MIKE JACOBS
Lionel L. Layden & A. Holmes Shiddon
919 Dauphin St., Mobile, Ala. 36604

Jack Greenberg, James M. Nabrit, III and Charles E. Williams, III
Suite 2030, 10 Columbus Circle
New York, New York 10019

Proposed intervenor HENRY REMBERT, EXECUTIVE SECRETARY, GULF COAST PARENT ACTION LEAGUE:
Henry Rembert, pro se
710 Chin St.
Mobile, Al. 36610

DEPOSITIONS:
DR. JAMES EVERETT VOYLES, 02-03-76.
DR. MELTON ALONZA McLAURIN, filed June 16, 1976.
DR. CORT B. SCHLICHTING, 7-8-76
ROBERT S. EDINGTON, 7-8-76
GARY COOPER, 7-9-76
CAIN J. KENNEDY, 7-9-76
DR. CHARLES L. COTRELL, 7-12-76
DR. CHARLES L. COTRELL, (Continuation) 9-15-76.

☐ CHECK HERE IF CASE WAS FILED IN FORMA PAUPERIS

DATE	FILING FEES PAID RECEIPT NUMBER	C.D. NUMBER	SEE INSTRUCTIONS ON REVERSE SIDE CARD	DATE MAILED
6-10-75	# 46471 - Crawford, Blacksher & Kennedy			

DATE	NR.	PROCEEDINGS
6-9-75	1	Complaint filed, mpc
6-10-75	2	Summons issued with complaint for service on defendants, mpc
6-17-75	3	Summons returned, executed as to LAMBERT C. KING as Comm., lps
	4	Summons returned, executed as to LAMBERT C. KING, Ind., lps
	5	Summons returned, executed as to ROBERT B. DOYLE, as Comm., lps
	6	Summons returned, executed as to ROBERT B. DOYLE, Ind., lps
	7	Summons returned, executed as to GARY A. GREENOUGH, as Comm., lps
	8	Summons returned, executed as to GARY A. GREENOUGH, Ind., lps
6-26-75	9	Motion for extension of time within which to respond to complaint filed by defendants; referred to Judge Hand, lps
	10	ORDER entered setting discovery cutoff date for SEPTEMBER 26, 1975 with pretrial briefs due by OCTOBER 10, 1975; copies mailed to attorneys Blacksher, Still, Arendall and Sheppard, lps
6-26-75	11	Motion for extension of time within which to respond to complaint filed by defendants on June 26, 1975 is GRANTED; notice mailed to attorneys, lps
7-15-75	12	Interrogatories to defendants filed by plaintiffs, jb
7-22-75	13	Motion to dismiss, with memorandum attached, filed by defendants, wet,
	14	Motion to strike, with memorandum attached, filed by defendants, wet,
8-19-75	15	Answers and objections of defendants to plaintiffs' "Discovery Notice Interrogatories," filed Ajr
8-25-75	16	Defendants' Interrogatories to each plaintiff filed, Ajr
8-28-75	17	Supplemental memorandum in support of motion to dismiss filed by defendants, o'b
8-29-75		Motion to dismiss, filed by defendants July 22, 1975 and Motion to strike, filed by defendants July 22, 1975 submitted after arguments Ajr
9-26-75	18	Status Report. AMENDMENT TO STANDARD PRE TRIAL ORDER entered and DISCOVERY extended to and including Nov. 10, 1975, and naming of witnesses on or before Nov. 25, 1975. Copy of this Amendment mailed to the Attorneys of Record on 30 Sep. 1975. (W.J.O.)
10-28-5	19	Second interrogatories to defendants filed by plaintiffs, lps
	20	Motion to compel plaintiffs to answer interrogatories filed by defendants; referred to Magistrate on October 30, 1975, lps
10-29-5	21	Answers and objections to defendants' interrogatories filed by plaintiff ROBERT L. HOPE, lps
	22	Answers and objections to defendants' interrogatories filed by plaintiff WILEY L. BOLDEN, lps
	23	Answers and objections to defendants' interrogatories filed by plaintiff SHERMAN SMITH, lps
11-3-75	24	Interrogatories to the plaintiffs filed by defendants, jb
	25	Motion to compel answers of plaintiffs BOLDEN, HOPE and SMITH filed by defendants, Referred to Magistrate on 11-4-75, jb (Notices mailed to attorneys),
11-7-75	26	ORDER entered, by Magistrate, that plaintiff are to answer interrogatories of defendants within 10 days from this date (Min. Entry No. 39286), lps
11-10-5		Copies of Min. Entry No. 39286 mailed to attorneys, lps
11-13-75	27	Motion to extend discovery time an additional 30 days, filed by the plaintiffs, Ajr
		Discovery extended to and including DECEMBER 10, 1975, notices mailed to attorneys Ajr
11-14-75	28	Second request for production of documents filed by plaintiffs, jb
	29	Motion to reconsider order on motion to compel answers to interrogatories filed by plaintiffs, Referred to Magistrate on 11-17-75, jb

(SEE NEXT PAGE)

PLAINTIFF: BOLDEN, WILEY L., ET AL

DEFENDANT: CITY OF MOBILE, ET AL

DOCKET NO. 75-207-P

PAGE 2 OF ____ PAGES

DATE	NR.	PROCEEDINGS
11-17-75	30	Answers and objections of plaintiff SYLVESTER WILLIAMS, to defendants' interrogatories, filed, wet,
	31	Answers and objections of plaintiff CHARLES MAXWELL to defendants' interrogatories, filed, wet,
	32	Answers and objections of plaintiff EDWARD WILLIAMS to defendants' interrogatories, filed, wet,
11-18-75	33	Memorandum in support of motion to compel answers, filed by defendants, wet,
11-18-5	34	Motion to reconsider order on motion to compel answers to interrogatories filed by plaintiffs on November 14, 1975 is GRANTED by Magistrate; plaintiff given to December 4, 1975 to answer defendant's interrogatories; notice mailed to attorneys, lps
11-18-75	35	ORDER entered on defendants' motion to dismiss that insofar as the action is based on 42 USC 1985(3), complaint fails to state a cause of action & the motion to dismiss this cause as to all defendants is GRANTED. Defendants' motion to dismiss the cause of action under the Voting Rights Act of 1965, 42 USC 1973 is DENIED as to all defendants. Therefore, under 28 USC 1343(4), this court has jurisdiction of all defendants including the City of Mobile as to this cause of action; Since court has jurisdiction under 1343(4), it is unnecessary to discuss jurisdictional issue under 28 USC 1331. Motion of defendants as to the cause of action under 1973 & the attack of the jurisdiction as to 1343(4) is not well taken & is DENIED. Defendants' motion to strike attorneys' fees & the injunctive relief prayed for in paragraph V-2 is DENIED; M/E No. 39,371; Attorneys Blacksher & Bagwell advised of ruling by phone on 11-20-75; and on 11-20-75; copy of order mailed attorneys Blacksher, Still, Bagwell and Sheppard, wet,
11-21-75	36	Motion to allow further discovery of facts and opinions held by expert, Dr. James E. Voyles, filed by plaintiffs. mpc
	37	Notice of taking of deposition of DR. JAMES E. VOYLES filed by plaintiffs, mpc
11-25-75	38	Answers to Pla intiffs' second Interrogatories to Defendants filed, (je)
11-28-75		Status Report. ANSWER to be filed by next Friday. Set for Pre Trial in first week of Feb. 1976 (W.J.O.)
11-28-75	39	ORDER on plaintiffs' motion to allow further discovery of expert, DR. JAMES E. VOYLES that discovery afrequested by plaintiffs to Dr. Voyles' dissertation is GRANTED provided the plaintiffs pay expenses pursuant to FRCP, Rule 26(b)(4)(C). Motion as to further discovery is DENIED; M/E No. 39,470; copy mailed attorneys on 12-2-75, wet,
12-3-75	40	ANSWER filed by defendants, wet,
12-4-75	41	Answers and objections of plaintiff, RAYMOND SCOTT, to defendants' interrogatories, filed, wet,
	42	Answers and objections of plaintiff JOHN L. LeFLORE, to defendants' interrogatories, filed, wet,
	43	Answers and objections of plaintiff, OSSIE BENJAMIN PURIFOY, to defendants' interrogatories, filed, wet,
	44	Answers and objections of plaintiff, JANET LeFLORE, to defendants' interrogatories, jb

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CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF | DEFENDANT | DOCKET NO. ____ PAGE 3 OF ____ PAGES

DATE	NR.	PROCEEDINGS
12-4-75	44	~~Answers and objections of plaintiff, LEILA G. BROWN, to defendants' interrogatories, filed, wet,~~
	45	~~Answers and objections of plaintiff, JEFF FRANK KIMBLE, to defendants' interrogatories, filed, wet,~~
	45	Answers and objections of plaintiff, FRANCIS GARY WILSON, to defendants' interrogatories filed, jb
	46	Answers to defendants' second interrogatories filed by plaintiffs, jb
12-8-75	47	Plaintiffs' third discovery notice (interrogatories and request for production of documents) filed, grs.
12-11-75	48	Answers and objections to plaintiffs' second request for production of documents filed by defendants, jb
12-8-75	49	Answers and objections of plaintiff, OLLIE LEE TAYLOR, to defendants' interrogatories, filed, wet,
12-12-75	50	ORDER entered on defendants' motion compelling plaintiffs, WILEY L. BOLDEN, REVEREND R. L. HOPE and SHERMAN SMITH, to answer certain interrogatories that said plaintiffs are ORDERED that they answer interrogatories as set out in order; plaintiffs are further ORDERED to file written answers within 20 days of this order; Defendants' motion is DENIED as to those numbered interrogatories as more fully set out in order and plaintiffs' objections are sustained; M/E No. 39,542; wet,
12-15-75		Copy of M/E No. 39,542 mailed attorneys, wet,
12-15-75	51	Motion for certification of class filed by plaintiffs; referred to Magistrate; notice mailed attorneys, wet,
12-17-75	52	Appearance of Counsel for plaintiffs filed by Jack Greenberg, James M. Nabrit, III and Charles E. Williams, III, Ajr
12-31-75	53	Motion to extend time in which to answer certain interrogatories filed by plaintiffs, Referred to Magistrate on 1-7-76, jb
1-7-76	54	Motion to extend time for plaintiffs to answer interrogatories GRANTED to January 8, 1976, Notices mailed to attorneys, jb
	55	Answer to plaintiffs' third discovery notice filed by defendants, jb
1--8-76	56	Supplemental Answers of plaintiff, Wiley L. Bolden, to defendants' interrogatories filed, o'b
1--8-76	57	Supplemental Answers of plaintiff, Sherman Smith, to defendants' interrogatories filed, o'b
1--8-76	58	Supplemental Answers of plaintiff, John L. LeFlore, to defendants' interrogatories filed, o'b
1--8-76	59	Motion to dismiss certain plaintiffs, RODNEY O. TURNER & CHARLES JOHNSON, without prejudice, filed by other plaintiffs, o'b (Referred to Judge Pittman) o'b
01-13-76	60	Preliminary pretrial order for pretrial set 4th day of February, 1976 entered by Judge Pittman filed, copies of order mailed to attorneys on 01-07-76 by Mrs. Madge Andress, grs.
1-14-76	60-A	Motion to dismiss plaintiffs RODNEY O. TURNER & CHARLES JOHNSON filed 1-8-76 is GRANTED, Notices mailed to attorneys, jb
1-19-76	61	Order entered that plaintiffs may maintain this action as a class action, Minute Entry No. 39,816; copies mailed to attorneys Ajr
1-20-76	62	Motion to compel compliance filed by defendants, Referred to Magistrate on 1-21-76, jb

(SEE CONTINUATION SHEET)

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF: WILEY L. BOLDEN, ET AL | DEFENDANT: CITY OF MOBILE, ALABAMA | DOCKET NO. 75-297 H | PAGE 4 OF ____ PAGES

DATE	NR.	PROCEEDINGS
1-20-76	63	Supplemental answers to defendants' interrogatories filed by plaintiff, jb
	64	Supplemental answers to defendants' interrogatories filed by plaintiff, jb
1-21-76	65	Motion to compel defendants to answer interrogatories and produce documents filed by plaintiffs, Referred to Magistrate, jb
1-26-76	66	Motion to dismiss certain plaintiffs without prejudice filed by plaintiffs, jb
	67	Supplemental answers to defendants' interrogatories filed by defendant PURIFOY, jb
	68	Supplemental answers to defendants' interrogatories filed by defendant TAYLOR, jb
	69	Supplemental answers to defendants' interrogatories filed by defendant LeFLORE, jb
1-28-76	70	Supplemental answer to Plaintiffs' Third Discovery Notice filed defendants, (je)
1-29-76	71	Supplemental answers of plaintiff to defendants' interrogatories filed by plaintiff MAXWELL, jb
	72	Supplemental answers of plaintiff to defendants' interrogatories filed by plaintiff HOPE, jb
02-03-76		Deposition of DOCTOR JAMES EVERETT VOYLES filed, grs.
2-3-76	73	Joint Pretrial Document filed by parties, wet,
2--4-76		CASE PRE TRIED ON 4 FEB. 1976 BY JUDGE VIRGIL PITTMAN. (W.J.O.)
02-05-76	74	ORDER entered on pertrial hearing, copies mailed to attorneys by Mrs. Madge Andress, grs.
2-17-76	75	Amended Motion to compel defendants to answer interrogatories and produce documents filed by plaintiffs, Referred to Magistrate on 2-19-76, jb
2-19-76	76	Response to plaintiffs' "Amended Motion to compel defendants to answer interrogatories and produce documents" filed by defendants, jb
2-25-76	77	Specification of racially discriminatory acts filed by plaintiffs, wet,
3-8-76	78	Amendment to response to "Discovery Notice 1", filed by defendants, wet,
3-10-76	79	Motion filed by plaintiffs on 2-17-76 is MOOT, Notices mailed to attorneys, jb
3-12-76		Status Report, no problems. Judge Pittman to set date for trial, wet,
3-12-76		Motion to dismiss certain plaintiffs without prejudice, filed by plaintiffs Jan. 26, 1976 submitted without argument, Ajr
04-02-76	80	Notice of taking the deposition of DR. JAMES E. VOYLES filed by the plaintiff, grs.
04-07-76	81	ORDER entered DISMISSING plaintiffs RAYMOND SCOTT and ED WILLIAMS without prejudice. See Min. Entry No. 40,441, copy mailed to attorneys Stein, Blacksher, Still, Greenberg, Nabrit, Williams, Bagwell, Arendall and Sheppard on 04-08-76, grs.
04-29-76	82	Subjects of defense evidence as to responsiveness filed by defendant,
5-11-76	83	Notice of taking deposition of TONY PARKER filed by defendants, jb
5-17-76	84	Notice of taking deposition of DR. CHARLES COTRELL filed by defendants, jb
05-03-76	85	Notice of taking the deposition of DR. CHARLES COTRELL filed by the defendants, grs.
6-16-76		Deposition of DR. MELTON ALONZA McLAURIN filed. mpc

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CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT	DOCKET NO. 75-297-P
BOLDEN, WILEY L., ET AL	CITY OF MOBILE, ET AL	PAGE 6 OF ___ PAGES

DATE	NR.	PROCEEDINGS
10-21-76	102	Opinion and order with Findings of Fact and Conclusions of Law entered that there shall be elected in the August, 1977 municipal election, a mayor elected at-large and nine council members elected from nine single-member districts. Plaintiffs' claims for attorneys' fees & costs will be determined after a hearing on these issues. It is court's judgment that this decree this date is a final judgment & decree from which an appeal may be taken. However, in event it is not a final decree, court ex mero motu pursuant to 28 USC 1292(V) finds that a controlling question of law is involved. Court retains jurisdiction of this action to secure compliance with its decree issued contemporaneously herewith & for such other & further relief as may be equitable & just; M/E No. 42,074; copy given this date to attorneys J. U. Blacksher and David Maxwell. On 10-22-76 copy mailed attorneys Edward Still and S. R. Sheppard, wet,
10-22-76	103	JUDGMENT entered as set out in above opinion of 10/21/76; M/E No. 42,080; copy mailed attorneys, wet,
10-28-76	104	Amendment to correct opinion & order dated 10/21/76 as more fully described in amendment; M/E No. 42,123; copy mailed attorneys on 11-1-76, wet,
11-3-76	105	PLAINTIFFS' PLAN N filed, being a plan for nine districts in the City of Mobile and a ward breakdown showing the number of black citizens residing in each ward according to the 1970 census. (Map attached as Exhibit A, placed in red folder.) mpc
11-17-76	106	Motion to reconsider order of October 21, 1976 filed by defendants (intervenors) Ajr
	107	Motion to intervene as defendants under Rule 24, filed by intervenors Chris M. Zarocostas, Joe Simmon and Mike Jacobs Ajr
11-18-76	108	Notice of Appeal filed by defendants, wet,
	109	Security for costs on appeal filed by defendants, wet,
		Copy of Notice of Appeal and certified copy of docket entries to Clerk, 5th CCA, wet,
		Copy of Notice of Appeal mailed attorneys for appellees (plaintiffs), wet,
11-18-76	110	AMENDMENT to the opinion and order of 10/21/76 entered as more fully set out in amendment; M/E No. 42,272-B; copy mailed attorneys on 11/19/76, wet,
	111	AMENDMENT to the judgment entered 10/21/76 entered as more fully set out in amendment; M/E No. 42,272-A; copy mailed attorneys on 11/19/76, wet,
1-18-76		Motion to reconsider order of 10/21/76 filed by defendants-intervenors is argued and TAKEN UNDER SUBMISSION, wet,
		Motion to intervene as defendants under Rule 24 filed by intervenors CHRIS M. ZAROCOSTAS, JOE SIMMON and MIKE JACOBS is argued and TAKEN UNDER SUBMISSION, wet,

90-111A REV. (1/75)

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT	DOCKET NO. ___
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DATE	NR.	PROCEEDINGS
05-21-75	96	Submission of qualifications of experts filed by defendant, with attachments, grs.
6-23-75	97	Witness list filed by plaintiffs, jb
6-24-75	98	Notice of taking deposition of CAIN J. KENNEDY filed by plaintiffs, jb
	99	Notice of taking deposition of ROBERT EDINGTON filed by plaintiffs, jb
7-8-76		Deposition of DR. CORT B. SCHLICHTING filed, mpc
		Deposition of ROBERT S. EDINGTON filed, mpc
7-9-76		Deposition of GARY COOPER filed, mpc
7-9-76		Deposition of CAIN J. KENNEDY filed, mpc by Plaintiffs,
		Plans for creation of single member districts in City of Mobile filed
7-12-76	90	TRIAL begun; witnesses examined, exhibits offered & trial not being completed at 5:10 P.M., Court recessed to 7-13-76 at 9:00 A.M., M/E No. 41,268-A; copy mailed attorneys on 7-13-76, wet,
7-13-76	91	Trial resumed, witnesses examined, exhibits offered & Court recessed at 4:50 P.M. to 7-14-76 at 9:00 A.M., M/E No. 41,268-A; copy mailed attorneys on 7-15-76, wet,
7-14-76	92	Trial resumed, witnesses examined, exhibited offered & Court recessed at 4:55 P.M. to Monday, July 19, 1976, at 9:00 A.M., M.E. No. 41,289-A. Copy of M.E. 41,289-A mailed to Attorneys of Record on July 21, 1976. (W.J.O.)
7-19-76	93	Trial resumed, witnesses examined, exhibits offered & Court recessed at 5:00 P.M. to Tuesday, July 20, 1976, at 9:00 A.M., M.E. No. 41,303-A. Copy of M.E. 41,303-A mailed to Attorneys of Record on July 21, 1976. (W.J.O.)
7-20-76	94	Trial resumed, witnesses examined, exhibits offered & Court recessed at 4:45 p.m. to Wednesday, July 21, 1976, at 9:00 a.m., M. E. No. 41,318-A. Copy of M. E. No. 41,318-A mailed to attorneys of record on July 23, 1976. jrb.
7-21-76	95	Trial resumed, witnesses examined, exhibits offered & defendants rest at 5:02 p.m. The Court ordered that the trial be recessed to be set down for arguments at a later date. M. E. No. 41,323-B. Copy of M. E. No. 41,323-B mailed to attorneys of record on July 23, 1976. jrb.
09-09-76	96	Plaintiffs' submission of plans filed, grs.
9-17-76	97	TRIAL RESUMED for post-trial arguments, arguments heard, and trial RECESSED to a later date for arguments on the Plans submitted by the parties, (Minute Entry No. 41737-B). mpc
		Copies of Minute Entry No. 41737-B mailed to all attorneys of record mpc
9-15-76		Continuation of Deposition of DR. CHARLES L. COTRELL filed, mpc
10-4-76	98	Plaintiffs' interrogatories regarding attorneys' fees filed by plaintiff, jrb.
10-13-76	99	Answer and Objection filed by all defendants, (je)
10-6-76	100	ORDER entered appointing JOSEPH N. LANGAN, ARTHUR R. OUTLAW and JAMES E. BUSKEY as committee to formulate plan for mayor-council form of government & committee is given target date to report to the court of 12-1-76; M/E No. 41,943-D; copy mailed attorneys on 10-15-76, wet,
10-14-76	101	Submission of population estimates for Plan F, filed by plaintiffs, wet,

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT	DOCKET NO. 75-297-P
BOLDEN, WILEY L., ET AL	CITY OF MOBILE, ET AL	PAGE ___ OF ___ PAGES

DATE	NR.	PROCEEDINGS
2-2-77	126	ORDER entered that motion to intervene filed by HENRY REMBERT, EXECUTIVE SECRETARY OF THE GULF COAST PARENT ACTION LEAGUE on 1-4-77 & amended on 1-17-77 is DENIED; M/E No. 42,840-D; on 2-4-77, copy mailed attorneys and Henry Rembert, wet,
2-15-77	127	Stipulation for temporary retention of record filed by parties, wet,
2-17-77		Certified copy of docket entries mailed to Clerk, 5th CCA and to attorneys, wet,
2-28-77		Depositions of GROVER CLEVELAND THORNTON, III, ROBERT S. VANCE, JAMES A. HARRIS, JR. & EDWARD MALCOLM FRIEND, III, grs.
3-2-77		On 2 Mar. 1977 received from the U.S. Court of Appeals, Fifth Circuit, an ORDER reading as follows: "ORDER: IT IS ORDERED that appellants' motion to enlarge the time for the filing of the record on appeal including the court reporter's transcript to and including March 4, 1977, is GRANTED." (W.J.O.)
3-4-77		Court Reporter's transcript of trial proceedings filed, 1,503 pages, wet,
3-9-77	128	ORDER entered adopting mayor-council plan (Appendix A) and plaintiffs' plan for nine single-member council districts (Appendix B), and directing that the regularly scheduled city elections in August, 1977, and each four years thereafter, the City of Mobile shall elect nine members to a city council and a mayor. One member of the City Council shall be elected by and from each district. The mayor is to be elected at-large. The Court reserved a decision upon the plaintiffs' claim for attorneys' fees and out-of-picket expenses. (Minute Entry No. 43081). mpc
		Copies of Minute Entry No. 43081 mailed to all attorneys of record, on 3-9-77. mpc
3-18-77	129	NOTICE OF APPEAL from the order of March 9, 1977, the opinion and order entered on October 21, 1976 and the judgment entered on October 22, 1976 filed by defendants, lps
	130	Application for stay pending appeal, with brief attached, filed by defendants; referred to Judge Pittman, lps
3-23-77	131	Plaintiffs' opposition to defendants' application for stay pending appeal filed, wet,
3-23-77		Application for stay pending appeal filed by defendants on 3/18/77 and plaintiffs' opposition to defendants' application for stay pending appeal filed 3/23/77 are argued & TAKEN UNDER SUBMISSION, wet,
4-7-77	132	ORDER entered STAYING the court's prior orders requiring a mayor-council election in August, 1977; directing that preparations for elections under the city commission form of government shall be held as regularly scheduled in August, 1977, all pending result of appeal to Fifth Circuit, (Minute Entry No. 43265). Copy of order delivered to J. U. Blacksher on 4-7-77; to C. E. Arendall, Jr. on 4-8-77; copies mailed to attorneys Still, Greenberg, etc. and Sheppard on 4-11-77. mpc

DC-111A REV. (1/75)

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT	DOCKET NO. ___
		PAGE ___ OF ___ PAGES

DATE	NR.	PROCEEDINGS
4-18-77	133	Notice of Appeal of order of 4-7-77 filed by plaintiffs, wet,
	134	Security for costs on appeal filed by plaintiffs; wet,
4-26-77	135	Stipulation for temporary retention of record filed by parties; wet,

DC-111A REV. (1/75)

DOCKET-U.S. COURT OF APPEALS

6/9/75 87

SUBJECT																		CROSS APPEAL NO.	CASE NUMBER
CRIM.	PRIS. w/	PRIS. w/out	2255 w/	2255 w/out	SOC. SEC.	NLRB	P.C. DIV	P.C. FED	U.S. CIV	TAX	BKCY	OR-AGEN Review	CIVIL RIGHTS		SOL.	CROSS APPEAL			76-421(
													X						

CIRCUIT 5 APPEAL ___ FROM Southern DISTRICT OF Alabama AT Mobile

DATE DOCKETED 11/26/76 $50 FEE PAID 11/26/76 JUDGE Virgil Pittman

DATE NOTICE OF APPEAL FILED 11/19/76

D.C. DOCKET NUMBER CA-75-297-P

4-Exp.

WILEY L. BOLDEN, Et Al.,

Plaintiffs-Appellees,

versus

CITY OF MOBILE, ALABAMA; Et Al.,

Defendants-Appellants.

RULE 30(C)

Consolidated with No. 76-3619 & 77-11 & No. 77-2042

APPEARANCE FILED-DATE	CODE	ATTORNEYS FOR APPELLANT	A
		Wm. C. Tidwell, P. O. Box 123, Mobile, Ala. 36601 (205)(432-5511)	
12-2-76	✓	Charles B. Arendall, Jr. -do-	
12-2-76	✓	Charles S. Rhyne, 1000 Conn. Ave., N.W., Suite 800, Washington, D.C. 20	
		S.R. Sheppard, City Hall, City of Mobile Legal Dept., P. O. Box 1827 Mobile, Ala. 36601	
6-1-77	✓	William S. Rhyne, 1000 Conn. Ave., N.W., Suite 800, Washington, D. C. 20036 (202-466-5420)	

CLOSED

APPEARANCE FILED-DATE	CODE	ATTORNEYS FOR APPELLEE	A
		Gregory B. Stein, 1407 Davis Ave., Mobile, Ala. 36602	
12-6-76	✓	J. U. Blacksher, -do-	
12-6-76	✓	Larry Menefee, -do- (205) 432-1691	
12-6-76	✓	Edward Still, Suite 601, Title Bldg., 2030 3rd. Ave. N., Birmingham, Ala. 35203	
12-6-76	✓	Jack Greenberg, Suite 2030, 10 Columbus Circle, N.Y., N.Y. 10019	
		James M. Nabrit, III, -do-	
		Charles E. Williams, III, -do-	
12-6-76	✓	Eric Schnapper, -do- (212) 586-8397	
		AMICUS CURIAE (See Reverse for additional Amicus Attorneys)	
7-21-77		Dennis J. Dimsey, Atty., Civil Rights Div., Appellate Sect., U.S. Department of Justice, Washington, D.C. 20530 (for U.S.A.)	

TITLE: BOLDEN, Et Al. -vs- CITY OF MOBILE, ALA., Et Al. NO. 76-421(

1. RECORD, EXHIBITS AND BRIEF INFORMATION Filing:

2-28-77	Partial Record or Cert. List	
5-23-77	Record on Appeal	No. of Vols. 5
	Supp. Record	No. of Vols.
	Second Supp. Record	No. of Vols.
5-23-77	Exhibits ☐ Env. ☐ Box ☐ Pkg. ☐ Roll	
6-3-77	Appendix ☐ (P) ☒ (M) Vols. 1+2 also fd 77-2042 (J)	
	Former Appeal Record	
	Administrative Transcript	
	Briefing Notice Issd.	
4-19-77	Brief for Appellant (P)	
	Brief for Appellant	
	Brief for Cr. Appellant	
5-31-77	Brief for Appellee (P-T)(J) 6-10-77 (M)(J)	
	Brief for Appellee	
	Brief for Cr. Appellee	
5-31-77	Reply Brief for Appellant (M)(J)	
7-5-77	Supp. Brief for Appellant (M)(J)	
7-6-77	Supp. Brief for Appellee (M)(J)	
7-11-77	Brief for Amicus (M)(J) U.S.A. - also fd 76-3619	
	Intervenor	
	Rule 13(a) Certificate	

2. MISCELLANEOUS FILINGS Filing:

11/26/76	Dup. Notice of Appeal and Clerk's Statement of Docket Entries
	Papers Trans. from Misc. No.
1-3-77	Order of DC Ext. Time to File Record to 2-17-77
	Order of DC Granting Appeal IFP
	Order of DC Appointing Counsel
	Affidavit of Financial Status
	CJA 20 Issd./Voucher Recd.
3-16-77	Notice of Election Rule 30(c)
4-13-77	Appellant's Designation
5-16-77	Appellee's Designation
	Designation
	Order to Show Cause –
	Local Rule 9(b) Dismissal Order
	CJA 21 for Transcript
3-4-77	Order of D.C. Ext. Time to file Record to 3-4-77

3. AGENCY REVIEW CASES Filing:

	Petition for Review of Order ( ) of ☐ NLRB ☐ FPC ☐
	Application for Enforcement – NLRB
	Answer to Application for Enforcement
	Cross Application for Enforcement

4. EXTENSION Flg. Motion for:

		Order Fld.	Ext. to
2-19-77	Record, Trans. 2-4-2-10-77 (JSG)	3-1-77	3-4-7
	Appendix		
	Appellant's Brief		
	Appellant's Brief		
	Appellant's Brief		
	Appellee's Brief		
	Appellee's Brief		
	Appellee's Brief		
	Reply Brief		

5. CALENDAR INFORMATION

Rule 18 Notice Issued

Summary Panel

5-10-77 Case Assigned for 6-13-77 in ☒ EB ☐ W ☐ E ☐

Case Cont'd for Reassignment

Case Reassigned for ___ in ☐ EB ☐ W ☐ E ☐

Hearing Panel JMW - BS - GBT

6-13-77 Case Argued ☒ by Appellants ☒ by Appellees

Case Sub. w/o Arg. ☐ by Appellant ☐ by Appellee

6. OPINION INFORMATION

3-29-78 Opinion Rendered

GBT	Affirmed				
	Reversed				
	Affd. in Pt.		P.C.	JMW	Conc. Spec.
	Vacated	✓	Signed		Dis.
	Dismissed		Rule 21		Dis. in Pt.

Opinion Withdrawn

Refiled in 76-3619, 77-1196 & 77-2042

Issued by Fifth Circuit Clerk

Mandate Issued 4-13-78 p. 3408

7. REHEARING INFORMATION

Mot. for Ext. – Ext. to:

Mot. for Ext. – Ext. to:

Petition for Rehearing ☐ Appellant ☐ Appellee ☐ Reg. ☐ En Banc

Petition for Rehearing ☐ Appellant ☐ Appellee ☐ Reg. ☐ En Banc

Response of

Order Denying Rehearing ___ Dissenting

☐ Opinion 39

☐ Order on Petition for Rehearing 39

76-4210

MOTIONS

...ng Motion to or for:	Response Filed By	Date	Granted	Denied	By Court	By Clerk	Date
Mandamus							
Docket Appeal Out of Time							
Reinstate Appeal							
Stay Further Proceedings in CA							
Stay Pending Appeal							
Injunction Pending Appeal							
...26-77 Consolidate Appeals (#77-2843)			✓		GBT		6-8-77
Leave to Appeal IFP							
Bail Pending Appeal							
Withdraw as Counsel							
Appointment of Counsel							
Leave to File Supp. Record							
Hearing on Original Record							
Hearing on Orig. Rec. & Typed Brief							
Leave to File Typed Brief							
...-11-77 Leave to File Brief in Excess Pgs.		See Sec 9.	4-19-77				
Dismiss by Appellant							
Dismiss by Appellee							
Amicus Curiae							
...-10-77 Leave to File Supp. Brief (Appellants) (Sub 4-10-77)			✓		GBT		6-22-77
11-78 Stay of Mandate sub 4-17-78 Cat	Appellees	4-17-78		✓	GBT		4-24-78
Recall of Mandate							

OTHER DOCKET ENTRIES

...2/20/76	Flg. suggestion of appellants requesting that this cause be heard and decided in conjunction with #76-3619 - Blacks United for Lasting Leadership, Inc., et al. vs. City of Shreveport et al. and suggestion for hearing en banc. (TGG)
...2/22/76	Flg. appellees' response to appellants' suggestion with respect to appellate review of this cause in conjunction with #76-3619.
...1/14/77	Flg. order DENYING petition for hearing en banc. (TGG) (Also fld 76-3619)
...1/14/77	Flg. order GRANTING appellants' motions to consolidate 76-3619 and 76-4210; further order GRANTING motions to expedite appeals; further order DENYING appellees' motion to dismiss cause 76-3619. (Also fld. in 76-3619) (RAA-LRM-TGG)
...7/77	Flg. appellants' suggestion for joint hearing with #76-2951 - Nevett, et al. v. Sides, et al.

CODE TO ENTRIES

ARG	– Argued
CE	– Clerk's Endorsement
E	– East Courtroom
EB	– En Banc Courtroom
F	– File
H	– Handwritten
J	– Sent to Judges
L	– Large
M	– Mimeo or Offset
P	– Printed
PT	– Preliminary Type
S	– Small
S9	– See Section 9
Sub	– Submitted
T	– Typed
W	– West Courtroom

JUDGMENT OR MANDATE INFORMATION

3-78	Bill of Costs
	Flg. & Entg. Judgment
	Isng. Copy of Jdgt. to Bd & Cnsl.
...R 2 5 1978	Jdgt. as Mdt. Issd. to Clerk
	Jdgt. as Mdt. Reissd. to Clerk
	Dismissal Issd. to Clerk
-27-78	Record on Appeal Retd. to Clerk
-27-78	Exhibits Retd. to Clerk (all)
	Mandate Stayed to

11. SUPREME COURT INFORMATION No. 77-1844

	Preparing Proceedings on Certiorari
	Preparing Supp. Proceedings on Cert.
	Transmitting Orig. Exhibits to S.C.
7-5-78	Order of S.C. – Ext. to
	Notice of Flg. of Cert. Pet. on 6-27-78
	Order of S.C. ☐ Denied ☐ Granted
	Notice of Denial of Pet. for Rehearing
	Opinion of S.C. dated
	Judgment of S.C.

Date	Filings-Proceedings
3/14/77	Flg. appellees' response to suggestion for joint hearing with #76-295... (Charles Nevett, et al.)
3/15/77	Flg. response of appellees, Wiley L. Bolden, et al. to suggestion for joint hearing.
4/6/77	Flg. Order GRANTING appellants' suggestion for joint hearing of this c... with #76-2951 - Nevett, et al. v. Sides, etc., et al. (TGG)
4/15/77	Flg. supplemental memorandum in support of motion of appellants for leave to file brief exceeding fifty pages.
4/19/77	Flg. Order GRANTING appellants' motion for leave to file their brief i... excess of 50 page limitation. (GBT)
4/19/77	Flg. appellees' motion for order restoring injunction. 4-27-77 (GBT)
4/27/77	Flg. appellants' memorandum in opposition to appellees' motion for ord... restoring injunction. 4-27-77 (GBT)
5/2/77	Flg. appellees' motion for leave to file brief in excess of 70 typed pg... GBT 5-3-77
5/11/77	Flg. Order CARRYING WITH THE CASE appellees' motion for order restorin... injunction entered by dist. ct. (JMW/BS/GBT)
5/31/77	Flg. Order GRANTING appellees' motion for leave to file brief in exces... 70 pgs. other than standard typographic printing but not to excee... 90 pgs. (GBT)
6/8/77	Flg. motion of The United States to file a brief as amicus curiae. (Also Fld. in 76-3619) (Gr. 6/8/77 - GBT)
6/13/77	Minute Entry - Court granted parties 20 days to file supplemental briefs to be filed simultaneously by each side in typewritten form. After a bench conference the Court will stay any election until the questions in this case are decided.
6/14/77	Flg. order DENYING appellee's motion for an order restoring injunction entered by the district court; further order GRANTING appellee's motion to stay holding of elections of any kind by government of city of Mobile, Alabama, until further advice by the court. (JMW-BS-GBT)
7/11/77	Flg. Order GRANTING motion of U.S. for leave to file brief as amicus curiae. (GBT)
6/19/78	Flg. Appellants' notice of appeal to Supreme Ct.
10/6/78	Flg. Order of Supreme Ct. noting probable jurisdiction.
10/10/78	Flg. Appellees' motion to vacate order staying elections issued by Dis...
10/12/78	Flg. Order DENYING appellees' motion to vacate order staying elections issued by Dist. Ct. (JMW/GBT).
10/27/78	Flg. Appellants' a... for stay of elections ...

6/9/75

SUBJECT																		
CRIM.	PRIS. CIV	PRIS. PRIV	SOC SEC	SOCIAL SEC.	SEC. SEC.	FELAB	F.C. DIV	F.C. FED	U.S. CIV	TAX	BKCY	CRIMINAL RIGHTS	CIVIL RIGHTS		SCHOOL	CROSS APPEAL
													X			

CROSS APPEAL NO.

CASE NUMBER 77-204

CIRCUIT'S APPEAL FROM Southern DISTRICT OF Alabama AT Mobile

DATE DOCKETED 5/19/77 $50 FEE PAID 5/19/77 JUDGE Virgil Pittman

DATE NOTICE OF APPEAL FILED 3/18/77

D.C. DOCKET NUMBER CA-75-297-P

WILEY L. BOLDEN, ET AL.,

Plaintiffs-Appellees,

versus

CITY OF MOBILE, ALABAMA; ET AL.,

Defendants-Appellants.

Consolidated w/No. 76-4210

APPEARANCE FILED—DATE	CODE	ATTORNEYS FOR APPELLANT
5-27-77	✓	C. B. Arendall, Jr., P. O. Box 123, Mobile, Ala. 36601
		William C. Tidwell, III, -do-
		Travis M. Badsola, Jr., -do-
		Fred G. Collins, City Atty., Legal Dept. of the City of Mobile, City Hall, Mobile, Ala. 36602
5-27-77	✓	Charles S. Rhyne, 1000 Conn. Ave., N.W., Suite 800, Washington,
6-1-77	✓	William H. Rhyne, (202-466-5420) D.C. 20036
		Donald A. Carr, -do-
		Martin W. Matzen, -do-

CLOSED

APPEARANCE FILED—DATE	CODE	ATTORNEYS FOR APPELLEE
		Gregory B. Stein, 1307 Dawin Ave., Mobile, Ala. 36603
5-27-77	✓	J. U. Blacksher, (205)432-4481 -do-
		Larry Menkes, -do-
5-27-77	✓	Edward Still, Suite 601, Title Bldg., 2030 3rd. Ave., N., Birmingham, Ala. 35203 (205)322-4474
6-1-77	✓	Jack Greenberg, Suite 2030, 10 Columbus Circle, N.Y., N.Y. 10019
		James M. Nabrit, III, -do-
		Charles E. Williams, III, -do-
6-1-77	✓	Eric Schnapper, -do- 212-586-7397

United States Court of Appeals for the Fifth Circuit — Docket, Form 1 (Rev. 4/74) 14

Page 1 of

TITLE: BOLDEN, ET AL. -vs- CITY OF MOBILE, ET AL. NO. 77-204

1. RECORD, EXHIBITS AND BRIEF INFORMATION — Filing:

- 5-23-77 Record on Appeal — No. of Vols. 2
- Partial Record or Cert. List
- Supp. Record — No. of Vols.
- Second Supp. Record — No. of Vols.
- Exhibits ☐ Env. ☐ Box ☐ Pkg. ☐ Roll
- 6-3-77 Appendix ☐ (P) ☒ (M) Vols. 1-2 also fld. 76-4210 (M)
- Former Appeal Record
- Administrative Transcript
- Briefing Notice Iss'd. 5-23-77
- Brief for Appellant
- Brief for Appellant
- Brief for Cr. Appellant
- Brief for Appellee
- Brief for Appellee
- Brief for Cr. Appellee
- Reply Brief for Appellant
- Supp. Brief for Appellant
- Supp. Brief for Appellee
- Brief for Amicus
- Intervenor
- Rule 13(a) Certificate

2. MISCELLANEOUS FILINGS — Filing:

- 5/19/77 Dup. Notice of Appeal and Clerk's Statement of Docket Entries
- Papers Trans. from Misc. No.
- 9-6-77 Order of DC Ext. Time to File Record to 10-18-77
- Order of DC Granting Appeal IFP
- Order of DC Appointing Counsel
- Affidavit of Financial Status
- CJA 20 Iss'd./Voucher Recd.
- Notice of Election Rule 30(c)
- Appellant's Designation
- Appellee's Designation
- Designation
- Order to Show Cause –
- Local Rule 9(b) Dismissal Order
- CJA 21 for Transcript

3. AGENCY REVIEW CASES — Filing:

- Petition for Review of Order ( ) of ☐ NLRB ☐ FPC ☐
- Application for Enforcement – NLRB
- Answer to Application for Enforcement
- Cross Application for Enforcement

4. EXTENSION Flg. Motion for: — Order Fld. — Ext. to:

- Record, Trans.
- Appendix
- Appellant's Brief
- Appellant's Brief
- Appellant's Brief
- Appellee's Brief
- Appellee's Brief
- Appellee's Brief
- Reply Brief

5. CALENDAR INFORMATION

Rule 18 Notice Issued

Summary Panel: 6-6-77 Case Assigned for 6-13-77 in ☐ EB ☐ W ☐ E ☐

Case Cont'd for Reassignment

Case Reassigned for in ☐ EB ☐ W ☐ E ☐

Hearing Panel: JRW-BS-GBT

6-13-77 Case Argued ☐ by Appellants ☐ by Appellees

Case Sub. w/o Arg. ☐ by Appellant ☐ by Appellee

6. OPINION INFORMATION

6-29-78 Opinion Rendered

GBT	Affirmed				
	Reversed				
	Affd. in Pt.		P.C.	JRW	Conc. Spec.
	Vacated	✓	Signed		Dis.
	Dismissed		Rule 21		Dis. in Pt.

Opinion Withdrawn

Also filed in 76-4210

Judgment Incorporating Co.

Distributed 6-13-78 p. 3408

7. REHEARING INFORMATION

- Mot. for Ext. – Ext. to:
- Mot. for Ext. – Ext. to:
- Petition for Rehearing ☐ Appellant ☐ Appellee ☐ Reg. ☐ En Banc
- Petition for Rehearing ☐ Appellant ☐ Appellee ☐ Reg. ☐ En Banc
- Response of
- Order Denying Rehearing ☐ Dissenting
- ☐ Opinion 59
- ☐ Order on Petition for Rehearing 59

United States Court of Appeals, Fifth Circuit – Docket, Form 1A (Rev. 4/74) 15

Page 3 of 4 pages

77-2042

MOTIONS

Date	Motion to or for:	Response Filed By	Date	Granted	Denied	By Court	By Clerk	Date
	Mandamus							
	Docket Appeal Out of Time							
	Reinstate Appeal							
	Stay Further Proceedings in CA							
	Stay Pending Appeal							
	Injunction Pending Appeal							
-26-77	Consolidate Appeals 4/26-4217			✓		GBT		6-8-77
	Leave to Appeal IFP							
	Bail Pending Appeal							
	Withdraw as Counsel							
	Appointment of Counsel							
	Leave to File Supp. Record							
	Hearing on Original Record							
	Hearing on Orig. Rec. & Typed Brief							
	Leave to File Typed Brief							
	Leave to File Brief in Excess Pgs.							
	Dismiss by Appellant							
	Dismiss by Appellee							
	Amicus Curiae							
-10-77	Leave to File Supp. Brief (appellant)			✓		GBT		6-22-77
-11-78	Stay of Mandate sub 4-17-78 GBT	Appellees	4-17-78		✓	GBT		4-24-78
	Recall of Mandate							

OTHER DOCKET ENTRIES

/13/77	Minute Entry - Court granted parties 20 days to file supplemental briefs to be filed simultaneously by each side in typewritten form. After a bench conference the Court will stay any election until the questions in this case are decided.
/19/78	Flg. Appellants' notice of appeal to Supreme Ct.
10/6/78	Flg. Order of Supreme Ct. noting probable jurisdiction.
[illegible]/78	[illegible] of actions [illegible] pending [illegible]

CODE TO ENTRIES

ARG – Argued
CE – Clerk's Endorsement
E – East Courtroom
EB – En Banc Courtroom
F – Flat
H – Handwritten
J – Sent to Judges
L – Large
M – Mimeo or Offset
P – Printed
PT – Preliminary Type
S – Small
SB – See Section B
Sub – Submitted
T – Typed
W – West Courtroom

I. JUDGMENT OR MANDATE INFORMATION

Date	
	Bill of Costs
	Flg. & Entg. Judgment
R 25 1978	Issg. Copy of Jdgt. to Bd & Cnsl.
	Jdgt. as Mdt. Issd. to Clerk
	Jdgt. as Mdt. Reissd. to Clerk
	Dismissal Issd. to Clerk
-27-78	Record on Appeal Retd. to Clerk 2 vols
	Exhibits Retd. to Clerk
	Mandate Stayed to

II. SUPREME COURT INFORMATION No. 77-1844

Date	
	Preparing Proceedings on Certiorari
	Preparing Supp. Proceedings on Cert.
	Transmitting Orig. Exhibits to S.C.
7-5-78	Order of S.C. – Ext. to
	Notice of Flg. of Cert. Pet. on 6-27-78
	Order of S.C. ☐ Denied ☐ Granted
	Notice of Denial of Pet. for Rehearing
	Opinion of S.C. dated
	Judgment of S.C.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

WILEY L. BOLDEN, REV. R.L. HOPE, CHARLES JOHNSON, JANET O. LEFLORE, JOHN L. LEFLORE, CHARLES MAXWELL, OSSIE B. PURIFOY, RAYMOND SCOTT, SHERMAN SMITH, OLLIE LEE TAYLOR, RODNEY O. TURNER, REV. ED WILLIAMS, SYLVESTER WILLIAMS AND MRS. F. C. WILSON,

Plaintiffs;

vs.

CITY OF MOBILE, ALABAMA; GARY A. GREENOUGH, ROBERT B. DOYLE, JR., AND LAMBERT C. MIMS, individually and in their official capacities as Mobile City Commissioners,

Defendants.

CIVIL ACTION NO. 75-297H

COMPLAINT

I.

Jurisdiction

Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§1331 and 1343. The amount in controversy exceeds $10,000.00 exclusive of interest and costs. This is a suit in equity arising out of the Constitution of the United States, the First, Thirteenth, Fourteenth, and Fiftteenth Amendments, and 42 U.S.C. Sec. 1973, 1983 and 1985 (3).

II.

Class Action

Plaintiffs bring this action on their own behalf and on behalf of all other persons similarly situated pursuant to Rule 23 (a) and 23 (b) (2), Federal Rules of Civil Procedure. The class which plaintiffs represent is composed of black citizens of the City of Mobile, Alabama. All such persons have been, are being, and will be adversely affected by the defendants' practices complained of herein. There are common questions of law and fact affecting the rights of the members of this class, who are, and continue to be, deprived of the equal protection of the laws because of the election system detailed below. These persons are so numerous that joinder of all members is impracticable. There are questions of law and fact common to plaintiffs and the class they represent. The interests of said class are fairly and adequately represented

by the named plaintiffs. The defendants have acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief and corresponding declaratory relief with respect to the class as a whole.

III.

Parties

A. Plaintiffs Wiley L. Bolden, Rev. R. L. Hope, Charles Johnson, Janet O. LeFlore, John L. LeFlore, Charles Maxwell, Ossie B. Purifoy, Raymond Scott, Sherman Smith, Ollie Lee Taylor, Rodney O. Turner, Rev. Ed. Williams, Sylvester Williams and Mrs. F. C. Wilson are black citizens of the City of Mobile, Alabama, over the age of 21 years.

B. Defendants, Gary A. Greenough, Robert B. Doyle, Jr., and Lambert C. Mims are each over the age of 21 years and are bona fide citizens of Mobile, Alabama. The defendants are the duly elected City Commissioners of Mobile.

IV.

Nature of Claim

A. The Mobile City Commission is the governing body of the City of Mobile, holding the legislative power granted to cities. In addition, its members perform certain administrative and executive functions.

B. The Mobile City Commission is organized under Act

163, Reg. Sess. 1911, as amended.

C. The three (3) commissioners on the City Commission are elected at large to numbered places.

D. The City of Mobile has a total population of 190,026, of whom 35.4% or 67,356 are black. Certain areas of Mobile are almost totally devoid of blacks, while others are virtually all black. Segregated housing patterns have resulted in concentrations of black voting power.

E. The present system of electing city commissioners discriminates against black residents of Mobile in that their concentrated voting strength is diluted and canceled out by the white majority in the city as a whole.

V.

Plaintiffs and the class they represent have no plain, adequate or complete remedy at law to redress the wrongs alleged herein, and this suit for a permanent injunction is their only means of securing adequate relief. Plaintiffs and the class they represent are now suffering and will continue to suffer irreparable injury from the unconstitutional election system described herein.

WHEREFORE, plaintiffs respectfully pray this Court to advance this case on the docket, order a speedy hearing at the earliest practicable date, cause this case to be in every way expedited and upon such hearing to:

1. Grant plaintiffs and the class they represent a declaratory judgment that the election system complained of herein violates the First, Thirteenth, Fourteenth, and Fifteenth Amendments to the Constitution of the United States and 42 U.S.C. Secs. 1973,

1983 and 1985(3).

2. Grant plaintiffs and the class they represent an order enjoining the defendants, their agents, successors, attorneys and those acting in concert with them and at their discretion from holding, supervising, or certifying the results of any election for the Mobile City Commission under the present at-large election system and from failing to adopt a plan of city government using single-member districts.

3. Award plaintiffs and the class they represent their costs in this action, including an award of reasonable attorneys' fees.

4. Grant such other and further equitable relief as the Court may deem just and proper.

CRAWFORD, BLACKSHER &
KENNEDY
1407 DAVIS AVENUE
MOBILE, ALABAMA 36603

By: /s/ J. U. Blacksher
J. U. BLACKSHER

EDWARD STILL, ESQ.
321 Frank Nelson Building
Birmingham, Alabama 35203

Attorneys for Plaintiffs

[caption omitted in printing]

MOTION TO DISMISS

Comes now each defendant in the above-styled cause, jointly and severally, and moves the court to dismiss this cause upon the following grounds:

1. The complaint fails to state a claim upon which relief can be granted.

2. Insofar as this action is against the City of Mobile and is based upon 42 U.S.C. §1983, the complaint fails to state a claim upon which relief can be granted.

3. Insofar as this action is based upon 42 U.S.C. §1985 (3), the complaint fails to state a claim upon which relief can be granted.

4. Insofar as this action is based upon 42 U.S.C. §1973, the complaint fails to state a claim upon which relief can be granted since the complaint affirmatively shows that no plaintiff is among those empowered to bring enforcement actions under any provision of the Voting Rights Act of 1965 other than Section 5 thereof.

5. Insofar as this action is jurisdictionally based upon 28 U.S.C. §1331, there is want of subject matter jurisdiction in this Court since it appears to a legal certainty that the claim of each class member is in reality for less than the requisite jurisdictional amount in controversy.

6. Insofar as this action is against the City of Mobile and is based upon a remedy inferred from the Constitution, cognizable under 28 U.S.C. §1331, the complaint fails to state a claim upon which relief can be granted.

7. Insofar as this action is brought under 42 U.S.C. §1973, the complaint fails to state a claim upon which relief can be granted, since that statute creates no new right the violation of which is actionable, but instead only a new remedy to implement previously held rights.

/s/ Charles B. Arendall, Jr.
Charles B. Arendall, Jr.
30th Floor - First National Bank Building
Mobile, Alabama 36602
Attorney for Defendants

OF COUNSEL:
HAND, ARENDALL, BEDSOLE, GREAVES & JOHNSTON

/s/ S. R. Sheppard
S. R. Sheppard
Attorney for Defendants

OF COUNSEL:
LEGAL DEPARTMENT OF THE CITY OF MOBILE

[Certificate omitted in printing]

[caption omitted in printing]

MOTION TO STRIKE

Comes now each defendant in the above-styled cause, jointly and severally, and moves the Court to strike from Plaintiffs' complaint the following prayers for relief:

1. The injunctive relief prayed for in Paragraph V-2 of the complaint, in which Plaintiffs seek to enjoin defendants "from failing to adopt a plan of city government using single-member districts".

2. The demand for "an award of reasonable attorneys' fees", contained in Paragraph V-3 of the complaint.

/s/ Charles B. Arendall, Jr.
Charles B. Arendall, Jr.
30th Floor - First National Bank Building
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Attorney for Defendants

OF COUNSEL:

HAND, ARENDALL, BEDSOLE, GREAVES & JOHNSTON

/s/ S. R. Sheppard
S. R. Sheppard
Attorney for Defendants

OF COUNSEL:

LEGAL DEPARTMENT OF THE CITY OF MOBILE

[Certificate omitted in printing]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ALABAMA SOUTHERN DIVISION

WILEY L. BOLDEN, et al.,	)	
	)	
Plaintiffs,	)	
	)	
V.	)	CIVIL ACTION
	)	No. 75-297-P
	)	
CITY OF MOBILE, ALABAMA, et al.,	)	
	)	
	)	
Defendants.	)	

ORDER ON MOTION TO DISMISS

The plaintiffs, black citizens of the City of Mobile, seek to bring this action as a class action on behalf of themselves and on behalf of all other black persons similarly situated, pursuant to Rule 23(a) and Rule 23(b)(2), Federal Rules of Civil Procedure.

It is alleged that they, and all other such persons, have been, are being, and will be adversely affected by the defendants' practices complained of, to wit, they are and continue to be deprived of equal protection of the laws because of the election at large system of the City Commissioners to numbered places. It is claimed this discriminates against black residents of Mobile in that their concentrated voting strength is "diluted and cancelled out by

the white majority."

The plaintiffs seek the following relief: (1) a declaratory judgment that the election system violates the First, Thirteenth, Fourteenth, and Fifteenth Amendments to the Constitution of the United States and 42 U.S.C. §§1973, 1983, and 1985(3); (2) issue an order enjoining the defendants, their agents, etc. from holding, supervising, or certifying the results of any election for the Mobile City Commission under the present at-large election system, and from failing to adopt a plan of City government using single member districts: (3) award the plaintiffs costs and a reasonable attorney's fee; (4) grant such other and further equitable relief as the court may deem just and proper.

Jurisdiction is invoked pursuant to 28 U.S.C. §§1331 and 1343.

The motion to dismiss the City of Mobile as a party defendant answerable under Section 1983 is well taken and should be granted. It is clear that a municipal corporation is not a "person" within the meaning of 42 U.S.C. §1983, *City of Kenosha v. Bruno*, 412 U.S. 507 (1973), 37 L.Ed.2d 109, 93 S. Ct. 2222; *Monroe v. Pape*, 365 U.S. 167 (1961), 5 L.Ed.2d 492, 81 S. Ct. 473.

The motion to dismiss the City of Mobile under §1985(3) is due to be granted. The City of Mobile is not a "person" within the meaning of that section. *Bosely v. City of Euclid*, 496 F.2d 193 (6th Cir. 1974); *Mack v. Lewis*, 298 F. Supp. 1351 (D.C. Ga. 1969).

Furthermore, a claim against any defendant is not stated pursuant to that section.

In *Westberry v. Gilman Paper Co.*, 507 F.2d 206, 214 (1975), the Fifth Circuit summarized a 1985(3) cause of action as follows:

"This requires that the complaint show that there was a conspiracy; that such a conspiracy be for the purpose of depriving an individual of the equal protection of the laws; that the co-conspirators acted in furtherance of their conspiracy, and that the plaintiff was injured in his person or property or actually deprived of a citizen's right or privilege. Second, as the Supreme Court noted in Griffin: [T]he language of [of 1985(3)] requiring intent to deprive of equal protection or equal privileges, and immunities means that there must be some racial or perhaps otherwise class based invidiously discriminatory animus behind the conspirators' action."[1]

Plaintiffs have not set out sufficient allegations of a conspiracy to meet this test. They only alleged that the election system discriminates against them. [Complaint IV-E] Therefore, insofar as the action is based on 42 U.S.C. §1985(3), the complaint fails to state a cause of action and the motion to dismiss this cause of action as to all defendants in the complaint is well taken and is GRANTED.

The defendants' motion to dismiss the cause of action under the Voting Rights Act of 1965, 42 U.S.C. §1973 is not well taken and the motion is DENIED as to all defendants.[2]

Therefore, under 28 U.S.C. §1343(4), this court has jurisdiction of all defendants including the City of Mobile as to this cause of action.

Since this court has jurisdiction under §1343(4), it is unnecessary to discuss the jurisdictional issue under 28

[1]See Griffin v. Breckenridge, 403 U.S. 88.

[2]See the amendment to the Act approved August 6, 1975: "Section 401. Section 3 of the Voting Rights Act of 1965 is amended by striking out 'Attorney General' the first three times it appears and inserting in lieu thereof the following 'Attorney General or an aggrieved person." U. S. Code Congressional and Administrative News, P.L. 94-73, 89 Stat. 404.

U.S.C. §1331.[3] Therefore, motion of defendants as to the cause of action under §1973 and the attack of the jurisdiction as to §1343(4) is not well taken and is hereby DENIED.

The defendants' motion to strike attorneys' fees and the injunctive relief prayed for in paragraph V-2 is DENIED.[4]

Done, this the 18th day of November, 1975.

/s/ Virgil Pittman
UNITED STATES DISTRICT
JUDGE

---

[3]The complaint alleges an amount in controversy of $10,000 or more, but briefs claim the jurisdictional amount is based on a $10,000 loss to defendants rather than to the plaintiffs. For a good discussion of the right to proceed under §1331 with less than the $10,000 jurisdictional amount, see *Cortright v. Resor*, 325 F. Supp. 797 (D.C. N.Y. 1971) at p. 808. The case was reversed for other reasons.

[4]See the amendment to the Act approved August 6, 1975. "Section 402. Section 14 of the Voting Rights Act of 1965 is amended by adding at the end thereof the following new subsection: (e) In any action or proceeding to enforce the guarantees of the fourteenth or fifteenth amendment, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of these costs." *Supra*, footnote 2.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

WILEY L. BOLDEN, *et. al.*,	CIVIL ACTION NO: 75-297-P
Plaintiffs,	
vs.	
CITY OF MOBILE, *et. al.*,	
Defendants.	

ANSWER

Come now the defendants, the City of Mobile, Alabama, and Gary A. Greenough, Robert B. Doyle, Jr., and Lambert C. Mims, individually and in their official capacities as Mobile City Commissioners, and, in answer to the named plaintiffs' complaint, say:

FIRST DEFENSE

I. Jurisdiction

Defendants admit that this Court has subject matter jurisdiction of this cause insofar as it is a claim against the

said commissioners under 42 U.S.C. §1983, jurisdictionally premised upon 28 U.S.C. §1343. In all other respects the allegations of Section I of the complaint are denied.

II. Class Action

1. Defendants admit that the named plaintiffs purport to represent a class composed of all black citizens of the City of Mobile, but deny that this action may properly be maintained as a class action on behalf of such persons.

2. Defendants deny that blacks as such are adversely affected by any practices of defendants.

3. Defendants deny that blacks are, or continue to be, deprived of the equal protection of the law in the City of Mobile.

4. Defendants admit that the joinder of all members of the purported class would be impracticable.

5. Defendants deny that the named plaintiffs may properly represent all black citizens of the City of Mobile. Defendants say, on the contrary, that the political ideas of the named plaintiffs with respect to the issue in this case are not shared by all blacks in the community; that there is disparity among black citizens, as there is among white citizens, with respect to the form of city government which is desired.

6. Defendants deny that they have acted or refused to act on grounds generally applicable to the purported class.

7. Defendants deny that injunctive or declaratory relief with respect to the purported class is proper.

8. Except as herein expressly admitted, defendants deny all allegations of Section II of the complaint.

III. Parties

Defendants admit the allegations of Section III of the complaint.

IV. Nature of Claim

1. Defendants admit that the Mobile City Commission is the governing body of the City of Mobile by virtue of, but only to the extent allowed by, statutes enacted from time to time by the Legislature of the State of Alabama. Pursuant to such statutes, the commission performs certain executive and administrative functions and holds limited legislative powers. Plenary legislative authority over the affairs of the city is vested in the Legislature of the State of Alabama. The three city commissioners are elected at large to numbered places, each of which has different legally specified functions. Certain sections of the city are predominantly white and others are predominantly black, but such sections are scattered over the city and there is no geographical area of substantial size in which both whites and blacks do not reside.

2. Except as herein expressly admitted, defendants deny all allegations of Section IV of the complaint.

V. Relief

Defendants deny the allegations of Section V of the complaint and deny that the relief sought by the named plaintiffs is necessary or proper.

SECOND DEFENSE

All aspects of the government of the City of Mobile are subject to determination by the Legislature of the State of Alabama. In the exercise of its discretion, the Legislature has provided that the city have a City Commission form of government, as distinguished from a Mayor-Council or Mayor-Aldermen or City Manager form, and has specified the number of commissioners and the method to be used in electing them. Under our federal constitutional system, the determination of such matters is committed to state government and its components for resolution. The system chosen by the Legislature does not unconstitutionally deprive any of the many identifiable segments of the community from equal access to the electoral process, or discriminate for or against any such segment, and the continued existence of such system should be permitted by the judicial branch of the United States government.

THIRD DEFENSE

The choice of the form of city government is a political issue committed under our federal system to the states for resolution and, in the case of the City of Mobile, the issue has been resolved by the Legislature of the State of Alabama in favor of a City Commission form of government elected at large. If the named plaintiffs, or any other black citizens of the City, desire to change Mobile's form of government, they should seek appropriate action by the Legislature, which has authority over such matters and in which blacks from Mobile are currently serving as elected members.

FOURTH DEFENSE

The relief sought by plaintiffs in this cause ought not to be granted because it would effect a deprivation of due process and equal protection of law, since if each commissioner were required to be elected from a single-member district, without a change in the statutory duties of the respective city commissioners, each commissioner, managing a particular function of city government (*e.g.*, finance), would be directly responsible only to one of three geographical districts of the city. The result would be that the remaining portions of the city would have no vote at all either for or against such commissioner, who would execute policies of government without responsibility to two-thirds of those governed.

FIFTH DEFENSE

The relief sought by plaintiffs in this cause ought not to be granted because, in order for any court-ordered single-member district plan to be imposed that would avoid the existence of a city government without electoral responsibility and consequent deprivation of due process and equal protection of law, it would be necessary to change the form of city government validly enacted by the Legislature of Alabama from a city commission form to some other form of government. The choice of a form of city government is a function which our federal constitution entrusts to state government and its components, and the imposition of a different form of city government by a United States Court would violate established constitutional principles of comity and federalism.

/s/ C.B. Arendall, Jr.
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Attorney for Defendants

OF COUNSEL:

HAND, ARENDALL, BEDSOLE,
GREAVES & JOHNSTON

/s/ S.R. Sheppard
S.R. Sheppard

OF COUNSEL:

LEGAL DEPARTMENT OF
THE CITY OF MOBILE

[Certificate omitted in printing]

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

WILEY L. BOLDEN, ET AL,	:	
Plaintiffs,	:	
vs.	:	CIVIL ACTION NO. 75-297 P
CITY OF MOBILE, ALABAMA,ET AL,	:	
Defendants.	:	

ORDER

The plaintiffs have filed a motion for an order certifying that they may maintain this action as a class action under Rule 23(b)(2) of the Federal Rules of Civil Procedure.

The Court having considered the motion, oral argument and briefs of the parties certifies that the plaintiffs may maintain this action as a class action.

The plaintiff class for the purposes of injunctive relief under Rule 23(b)(2) F.R. Civ.P. is defined by the Court as all black persons who are now citizens of the City of Mobile, Alabama.

The Court finds that this class action complies with the requirements of Rule 23(a) and (b)(2) F.R.Civ.P. and that the named plaintiffs have the standing to raise the issues for

the purpose of injunctive relief.

DONE at Mobile, Alabama, this 19th day of January, 1976.

/s/ Virgil Pittman
UNITED STATES DISTRICT JUDGE

[caption omitted in printing]

ORDER

The United States Supreme Court having granted review of this lawsuit on October 2, 1978, and for the reasons stated in this court's Order of April 7, 1977 (the findings and conclusions of which are incorporated herein by reference),

It is ORDERED, ADJUDGED, and DECREED that pursuant to the last paragraph of this court's order of May 31, 1978, which provided for a stay of the mayor-council election ordered therein in the event the Supreme Court granted review, the election ordered for November 21, 1978, is hereby STAYED pending further orders of the United States Supreme Court.

Done, this the 3rd day of October, 1978.

/s/ Virgil Pittman
Virgil Pittman
by W.B. Hand per instruction
UNITED STATES DISTRICT JUDGE

U. S. DISTRICT COURT
SOU. DIST. ALA.
FILED AND ENTERED THIS THE
3rd DAY OF OCTOBER 1978
MINUTE ENTRY NO.
WILLIAM J. O'CONNOR, CLERK
BY-
Deputy Clerk

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D. C. 20543

October 16, 1978

J. U. Blacksher, Esquire
1407 Davis Avenue
Mobile, Alabama 36603

RE: City of Mobile, Alabama, et al v.
Wiley L. Bolden, et al., No. 77-1844
(A-315)

Dear Sir:

The Court today entered the following order in the above-entitled case:

"The application of appellees to vacate the order issued by the United States District Court for the Southern District of Alabama on October 3, 1978, presented to Mr. Justice Powell and by him referred to the Court, is denied."

Very truly yours,

MICHAEL RODAK, JR., Clerk
by
Francis J. Lorson
Deputy Clerk

[cc: list omitted]

blacks were disinfranchised before 1950.

MR. BLACKSHER:

All right, sir. There is some question in this case whether there was any discriminatory racial motive behind the 1911 Act.

THE COURT:

All right. Go ahead, Mr. Blacksher.

MR. BLACKSHER:

We call Dr. McLaurin.

DR. MELTON McLAURIN

the witness, called on behalf of the Plaintiffs, and after having first been duly sworn to tell the truth, the whole truth, and nothing but the truth, took the stand and testified as follows:

DIRECT EXAMINATION

BY MR. BLACKSHER:

Q May it please the Court, this is Dr. Melton A. McLaurin. Dr. McLaurin was born July 11, 1941. His place of birth was Fayetteville, North Carolina. His present address is 808 Deerfield Court, Mobile. He is married.

His formal education includes a Bachelor's Degree

and I have taught non-credit courses in the history of Mobile. Those are the basic courses that I teach.

Q Where did you teach these non-credit courses on the history of Mobile?

A At the University of South Alabama continuing education division.

Q Have you ever testified in Court as an expert witness, Dr. McLaurin?

A No, I haven't.

Q Have you ever testified as a witness in any role in Court?

A No. I haven't.

MR. BLACKSHER:

Your Honor, on the basis of the testimony of the witness and the evidence in his curriculum vitae, which we have not completely summarized, we move that Dr. McLaurin be qualified as an expert witness in the field of Southern History, generally, and in the history of Mobile, Alabama?

THE COURT:

All right. Go ahead.

MR. BLACKSHER:

Q Dr. McLaurin, what was the beginning of black political activity in Mobile, Alabama?

A Blacks became politically active in Mobile with

the beginning of radical reconstruction in the spring of 1867 and that was the beginning of their political activity.

Q How did they become active?

MR. ARENDALL:

Objection, irrelevant.

THE COURT:

I will let him show it. Overruled.

A They became politically active in almost all areas. They held a convention immediately after the passage of the Reconstruction Acts and gathered themselves together to decide what activities to engage in. From that point forward, which was in May of '67, and were active in almost all fields of political endeavor.

Q What about black citizens in Mobile, particularly? Were they any more active?

A Well, Mobile was the major urban center in the State and blacks congregated here at the end of the war and held sort of a black political convention here -- not at the end of the war, but at the beginning of radical reconstruction, yes. In a way, Mobile was a center for black political activity.

Q Were black Mobilians active in any way in forming policy?

A Blacks were represented at the convention in 1867

which wrote the constitution in 1868 and actively participated in that convention.

Q Do you recall the names of those black delegates?

THE COURT:

Is that detail necessary? You know, you are going over something that is generally knowledgeable. It is all right to build your pattern, but cut down on some of it unless the name has some particular significance.

MR. BLACKSHER:

We will move along, your Honor.

Q I don't want to say it was generally knowledgeable. Most of it was new to me.

THE COURT:

Well, go ahead.

MR. BLACKSHER:

Q What about from the period 1868 or 1867 forward, were blacks politically active in Mobile then?

A Blacks were active in Mobile politics and in the State, in general, up until 1901 and they were active throughout that period.

Q What was the effect of the 1893 Sayer election law, and what was that?

MR. ARENDALL:

Objection, irrelevant.

THE COURT:

I will let him testify.

A The Sayer election law was introduced primarily by the conservative elements of the Democratic party in an intent to cut down on the populist vote. It was a direct result of a challenge to the Democratic party by the populist and it was an effort to disinfranchise voters in lower socio-economic groups, including blacks, to some extent.

Q Did the Sayer law disinfranchise all black voters?

A No.

Q You say up until 1901. Would you describe what happened then?

A Nineteen hundred and one, the new constitution was adopted and one of the major purposes was for -- for its adoption was disinfranchisement of black voters. That was primarily it. And with the adoption of that constitution, blacks were effectively moved from the political process from the State of Alabama and the City of Mobile.

Q Was black disinfranchisement the principal purpose of the 1901 Alabama Constitution?

A I would say black disinfranchisement was the principal purpose for the constitutional convention and, in addition to that, it was the major way in which the

disinfranchisement was sold.

The idea that the convention was going to be held primarily to disinfranchise blacks and to guarantee white supremacy was the way the calling of the convention was sold to the public and it was the way the product of the constitution was sold to the public.

Q What were the reasons for the politicians then wanting to disinfranchise black voters?

A The movement probably gained its largest impact from the idea that black votes were corrupt and blacks causes corruption in the political activity and, therefore, to disinfranchise blacks would be a political reform by removing corruption from politics.

Now, that is the reason that is generally stated. There are other motives involved.

Q What was the so called reform movement that was going on, at that time?

A Well, this is generally called the progressive movement by historians and in the south the progressive movement included disinfranchisement because the black voting patterns were shown as corrupting patterns. Various whites sought the black vote.

As a matter of fact, it would be manipulated in the black belt counties to assure this passage.

Q Was disinfranchisement, as carried out through the 1901 constitution, resisted by black citizens?

A Oh, yes.

Q What about black Mobilians?

A Oh, yes. Black Mobilians, as a matter of fact, took the lead, they and blacks in Birmingham, in resisting disinfranchisement.

Q What were the devices employed by the 1901 constitution to disinfranchise blacks?

A There were a number of them. The basic one was literacy and property qualifications, residential qualifications, but the literacy requirement was the basic one.

Q What involvement in the 1901 constitutional convention was there by white Mobile politicians?

A Well, I think one can say, by and large, the progressive community in Mobile was considered, at that time by historians, was to be in the progressive democratic camp, which was quite active. The register, for example, was one of the leading newspapers calling for a constitutional convention. Several prominent politicians who would be considered progressives either supported the convention or participated in it.

Q Who were the delegates from Mobile to that convention?

A Well, the delegates to the convention were Harry

Pillans and a gentleman named Brooks, I believe, are the two that come to mind.

Q Did these Mobilians support the disinfranchisement of the black voters?

A Yes.

Q Do you have with you correspondence that was originated by Mr. Harry Pillans concerning his intention as a member of the 1901 constitutional convention?

A Yes. And I think generally they show a progressive attitude toward disinfranchisement; that is, disinfranchisement was a reform, a part of the general reform movement.

Q What brought about the adoption of the current commission form of city government in 1911?

A Well, I would say it was again considered a progressive reform. The idea of having a more efficient government, and particularly a government that was more business like and one that was less amenable to what the advocates of the commission form of government would have considered political corruption. These were the basic reasons, I think, for the support for the commission form of government.

It was also a part of the general progressive movement in the United States. Many other cities had already adopted the commission form of government, both nationally

and in Alabama.

Q Was racial discrimination, per se, a motivating factor in the passage of Act 281 of 1911 which created the Mobile City Commission?

A I would say that racial considerations, per se, were not a part of the motivation, for two reasons; the basic one being that the blacks had already been disinfranchised by the 1901 constitution and its effect upon the blacks of the State and of Mobile and -- but I think it is also true that the proponents of the commission form of government were very much aware of the impact of the changes in the electoral process and this is one of the things they wanted. They wanted to get away from what they considered ward politics and they would have been aware that such a movement would have diminished the impact of any voting by blacks in Mobile if there had been such voting in the future, but I do not see race, per se, as a reason for the 1911 City Commission. I would have to say no to that question.

Q What specific connection do you see between the 1901 constitutional convention and Act 281 in 1911?

A Well, the most obvious connection is that blacks in Mobile were totally unable to register any opinion, any voice in the development of the form of government, which was adopted in 1911, and continues to exist. That is the most

obvious connection.

The other connection would be this idea of the Commission form of government being a part of the general reform package, so to speak, in that in Alabama and in the south in general, at that time, and the connection between general reform and the idea of eliminating the franchise as a part of that general reform, those are the two possible connections.

Q What about in terms of black politicians?

A Well, many of the progressive politicians who had supported the constitution of 1901 here in Mobile also supported the Commission form of government. It was that kind of personal connection and Mr. Pillans would be, again, a very good example, since he was both a delegate at the 1901 constitution and was a member of the first City Commission.

Q What about the last mayor?

A Well, Mr. Lyons's position?

Q That was Pat Lyons?

A Yes. He was favorable to the 1901 constitutional convention and he also would have, after some thoughts, supported the 1911 movement and did serve on the first Commission as well.

Q What black political activity was there in Mobile right after 1911?

A None, approximately none. And, of course, that would be true, too, earlier, until you get way up until -- the modern period, the second World War.

Q When did black political activity again become significant in Mobile?

A Political activity, per se, not until after the decision in Smith versus Alright, which allowed blacks to take part in white primaries, what has been previously been all white primaries. 1944 would be the date.

Q The Clerk is handing you a document which has been marked as Plaintiffs' Exhibit number 2.

Would you identify that, please?

A Yes. That is an article by myself.

Q Would you read the title of the article?

A Mobile Blacks and World War II: The Development of a Political Consciousness.

Q Would you briefly tell the Court the subject of that article?

A Well, I think it would be fair to say that the article simply recounts the beginning of political activity by blacks in Mobile as a result of the second World War, the impact of returning veterans, black veterans, who had fought in the second World War and the ideas of equality and so forth and determined to obtain them in their home town when they came back

in trying to get the right to vote in 1944, which they were denied, and their appeals to the Democratic party and the Department of Justice and, finally, the opening up of the Democratic party to black participation and then white efforts led by Gessner McCorvey, who was chairman of the State Democratic Executive Committee and others to introduce legislative methods of suppressing black votes and then black challenges to that, particularly the Davis versus Schnell case which led to the declaration that the Boswell amendment, which was the disinfranchisement amendment was declared unconstitutional. That is briefly what the article covers.

Q Does it mention Mr. Langan's arrival on the scene as a friend of black interests?

A Yes, sir. It does. Mr. Joseph Langan.

Q And the article ends off at what point in time?

A It ends in 1950 with the legislative races of 1950.

Q Where was that article published, Dr. McLaurin?

A It was published in the proceedings of the Gulf Coast Histories and Humanities Conference, 1973.

Q There is one set of figures in that article that I would like for you to call to the Court's attention. There is a registration figure, I believe, for the year of 1946?

A That is correct. The registration figures, at that time, were two hundred and seventy-five registered blacks and

MR. ARENDALL:

Q How many people were on the aldermanic council unit that governed Mobile, at that time?

A I could not give you an exact figure. I would have to try to total up the wards and multiply.

Q A mere approximation?

A Approximately sixteen to eighteen.

Q Now, I will ask you whether or not a study of the newspaper articles of that time and the quotations of the comments made by persons such as Mayor Pat J. Lyons demonstrates that the change to the City Commission form was sold on the basis of business and other considerations completely unrelated to race?

A I would agree that the basic approach in the campaign to change the form of government of the City of Mobile would be an appeal to what would be called progressive economic motivation, the idea of moving to a more business like form of government.

Q And this movement, in Mobile, had its counter part all over the United States, at that time, did it not?

A And before that time.

Q In areas where there were no blacks or substantially none?

A Yes. That would be true.

Q Desmoines, that is one?

A Yes.

Q Dayton, that is another?

A Yes.

Q And it was not, in these other places, either, motivated by racial considerations, was it?

A No.

MR. ARENDALL:

No further questions.

REDIRECT EXAMINATION

BY MR. BLACKSHER:

Q Dr. McLaurin, I believe you said that one of the meaningful factors of the 1901 constitutional convention was to disinfranchise poor whites.

Are you saying that that was one of the primary purposes of that constitution?

A No. I am not saying that. I am saying the primary purpose of the constitutional convention was to disinfranchise blacks and that, as a secondary purpose, there was a move to disinfranchise poor whites and there were members of the constitutional convention who would have disinfranchised every one who didn't make at least fifty thousand dollars a year.

Whom will you have next?

MR. BLACKSHER:

Dr. Cort Schlichting.

DR. CORT B. SCHLICHTING

the witness, having first been duly sworn to tell the truth, the whole truth, and nothing but the truth, took the stand and testified as follows:

DIRECT EXAMINATION

BY MR. STILL:

Q May it please the Court, this is Cort Burk Schlichting. He is thirty-four years of age. He now lives at 301 Vanderbilt Drive in the City of Mobile.

He is married. Education includes a PHD from L.S.U. He has lived in Mobile County for the last five years and he is now employed as a professor of economics; is that correct?

A Associate.

Q Associate professor of economics at Springhill College. I would ask the Clerk to hand Dr. Schlichting Exhibit number 8.

Would you look at Exhibit 8, please, doctor, and

Did you talk with Mr. Parker about the inclusion of the two small areas that were periodically annexed and de-annexed?

A Very briefly, yes. We had to face that problem.

Q All right. Now, did you talk with them about what method to use or what method he was going to use to handle the data regarding those two small areas?

A Yes.

Q Now, considering the annexation, the synthetic wards that were done the way in which Mr. Parker computed the mean income computation and the use of the percentage of each race over the age of eighteen, rather than the percentage of each race which were actually registered to vote, what is your opinion as to the possible negative effect this had on the validity of the data?

A I felt that we did the best possible job we could do statistically to obtain the most accurate data we could get. All statisticians, all statistical data is going to have some error in it and given that caveat we attempted to gather the data as best we could and to have it as representative as possible.

Q All right. Now, doctor, what is the function of regression analysis?

A Regression analysis is a statistical technique

frequently called regression correlation analysis, where you attempt to see if there is an association between a dependent variable and various independent variables.

We attempt to explain the variations in the dependent variable, that is the movement in the dependent variables by movement in the independent variables.

Q In this particular case we are talking about what was the independent variable?

A The independent variables, there were two of them, where the income, per capita, mean income per capita, was one of the independent variables and the other one was the percent of race in a particular ward.

Q And what was the dependent variable?

A The dependent variable was a percent that a particular issue or a particular candidate obtained in a particular race, percent of the total vote in that ward.

Q Are there any problems presented by using two independent variables rather than one in the same analysis?

A No. You want to include probably more than one variable, because what you are attempting to do is to find which variable, which thing is effecting the dependent variable. So, when you throw in two or more and then by using regression correlation analysis you can find out which one is the most powerful variable.

Q All right. Mr. Clerk, would you hand the witness Exhibit number 9, please?

Dr. Schlichting, please look at Exhibit 9 and tell me whether you have ever seen it before?

A I have.

Q What is it?

A It is Dr. Voyles's desertation.

Q What is the title?

A The title of it is "An Analysis of Mobile Voting Patterns, 1948 to 1970".

Q Have you read the entire thing?

A No, I have not.

Q Have you read parts of it?

A Yes.

Q What parts have you read?

A I have read the methodological parts, the portions where he deals with the statistics that he had gathered and used in his desertation.

Q Does Dr. Voyles use regression analysis?

A In a manner of speaking, yes.

Q What type of regression analysis does he use?

A His statistical analysis is called Pearson's Product Moment Method. It is one of two main kinds of ways that we can look at variables and see which ones are effecting

the dependent variable.

Q Did we use the same method in ours?

A No. We did not.

Q What did we use?

A We used what is called least squares method.

Q In terms of Dr. Voyles's methodology, would you compare that with ours and tell us what the major differences were, if any?

A There are no real major differences. The differences statistically, the starting point of where you relate the various variable values to what base you relate the various variable values, but in point of fact, they give you the same answer.

Q Did Dr. Voyles trace income and race data as we did?

A He did.

Q Was the general format of that data, as far as you can tell from the desertation, pretty much the same as ours?

A It seemed to be quite similar. In fact, his format is what we used or attempted to use.

Q All right. Now, you have explained that the regression analysis, using the least squares method which we used can handle two or more independent variables?

A Correct.

Q Is the Pearson's R regression analysis technique capable of handling more than one independent variable at the time?

A Yes, sir, basically.

Q As far as you can tell from Dr. Voyles's thesis, did he do that, did he use more than one at a time?

A No. I think not. I think he used race and compared it to the percent of vote that a candidate got and then he compared income, if I recall correctly.

MR. STILL:

Your Honor, we move the introduction of Exhibit number 9.

THE COURT:

All right.

(Plaintiffs' Exhibit number 9 received and marked, in evidence)

MR. STILL:

Q Would the Clerk please hand the witness Exhibits 10 through 53.

Dr. Schlichting, have you had a chance to examine the computer print-outs which begin at Exhibit 10 and go through Exhibit 52?

A Yes.

Q Would you tell the Court what they are as a group,

similar to that giving dates and names?

A Yes, they are.

Q What is the next thing on the computer print out?

A The original data, the table of the original data.

Q And how is that data arranged?

A It is in three columns. The first column is the percent of the ward population that is black, over eighteen. The second column is mean income per capita and the third column -- those are both independent variables -- and the third column is the dependent variable. That is the percent of vote received in this particular case by Mr. Goode.

Q All right. Once that data .....

THE COURT:

Let me ask you a question. Do you mean the dependent variable is dependent on the independent variable?

A That is correct. That is what we are trying to postulate.

THE COURT:

You are saying there is a causal connection?

A No, sir, not a causal connection. There is an influence, we think. We are going to test for an influence at work.

We can't -- statistics say there is a cause and effect. We don't have that background.

THE COURT:

All right. To use your terminology it is less than causal?

A Yes. It is influential. At least, that is what we are testing.

MR. STILL:

Now, is that all the data, that is raw data that is fed into the computer?

A That is correct, other than control cards that tell the computer what to do and this sort of thing.

Q All right. Then is the program fed in?

A Yes.

Q All right. Now, is this a program that was written specifically for this case or is it a standard program?

A This is a standard program that was supplied by IBM at Springhill, one of many programs. I adjusted it to print up more than what they supplied, but basically that is it.

Q What other sort of things does Springhill use this for?

A I don't know that Springhill, per se, that is the administration has used it, but I have used it in a number of different things. I have used it in analysis of factors probably affecting bank credit and I have used it in several

reported in his desertation and for various multiple correlation coefficients that we found when we ran all of these computer print-outs.

Q All right. For the top portion of the top sheet you have "Voyles Pearson's R"?

A Yes.

Q And you have a set of dates and under each date you have income and race?

A Correct.

Q Now, is that the Pearson's R for income and the Pearson's R for race; is that what it is?

A Yes.

Q For each one of the elections that we are talking about?

A Correct.

Q Now, under regression, you have only listed a coefficient. Is that the coefficient of race or income or of both?

A That is the coefficient of race, unless otherwise specified.

THE COURT:

Hold up. The Reporter has to change his tape.

(OFF THE RECORD)

MR. STILL:

Would you repeat the last sentence or so that you said about the stars?

A All of our coefficients as shown in the middle of the first page and on down refer to race as the factor that entered first in the regression analyses unless there is a star by it, in which case, income was the most significant variable.

Q All right.

MR. ARENDALL:

Where is a star?

A There are no stars on the first page.

MR. ARENDALL:

I see.

THE COURT:

I think you should make a note at the top of that table that it is race unless indicated with a star.

MR. STILL:

Would you so indicate, please, next to the regression?

A Yes.

MR. STILL:

Your Honor, I am through looking at my copy of it. If you would like to look at it, we will be referring to it some more.

THE COURT:

All right.

MR. STILL:

Now, Dr. Schlichting, is there a point in which the multiple correlation coefficient is considered to be significant or not significant in regard to the type of analyses we have been running here?

A Well, as Dr. Voyles shows in his desertation, there is a table in here that lists the ranges within which these are values the regression coefficients are significant or not significant. Basically, anything above say fifty -- point five, point six, will begin to give you significant relationships.

Q All right. Now, would that also include above if we want to call that a negative point six?

A Yes. The sign is ignored.

Q All right. Now, if there was a correlation between two variables and the multiple correlation coefficient came out to be one point zero with a plus sign in front of it, what would that indicate as to the relationship between the two variables?

A It would indicate that there is a perfect relationship between the two variables, that the independent variable can perfectly explain the dependent variable.

Q If the multiple correlation coefficient came out as

along racial lines, what is the cast of this?

MR. STILL:

This is to show votes do polarize.

THE COURT:

I think we recognize in most elections, particularly where blacks and whites are running against each other that that is the case?

MR. STILL:

We would point out to your Honor we have only two or three instances in the twenty year period in which blacks have run for the City Commission and these elections we are talking about are, in most cases, whites versus whites so that we can show that there is a racial polarization.

THE COURT:

Yes. Certainly we take common knowledge of that. When Mr. Langan ran he became identified with black voters and there was a certain polarization there.

What I am saying, is when race becomes identified with a certain candidate, there is a tendency for polarization.

MR. BLACKSHER:

Judge, I think we have felt that we have that common knowledge, but what we are trying to do is verify that to the extent that we can.

THE COURT:

THE COURT:

All right.

(Plaintiffs' Exhibits 10 through 54, inclusive, was received and marked, in evidence.)

MR. STILL:

Q Dr. Schlichting, that's all the questions I have for you, at this time. Please answer Mr. Arendall's questions.

THE COURT:

You may proceed.

CROSS EXAMINATION

BY MR. ARENDALL:

Q Dr. Schlichting, without ever putting one finger on a computer I will ask you whether or not you would have figured that in the days of school dessegregation issues, adoption of the Civil Rights Act, the voting rights act that there would have been some tendency on the part of blacks to vote one way and the whites to vote another.

MR. STILL:

Objection, your Honor. The witness is a statistician and not a political scientist or a politician.

THE COURT:

Well, if he reads the newspapers and follows current

events, I think he can give some opinion, not as an expert, but as a layman.

I think it is almost a matter of common knowledge. Go ahead. As Mr. Blacksher has said, you can give statistical proof to recognized facts. Go ahead.

A I would have to say yes, certainly.

MR. ARENDALL:

Q Now, as far as the statistical proof of this thing, let's take a look at it, if you will.

First, would you tell us what "R" square is?

A "R" square is multiple coefficient of determination.

Q As related to the regression analysis which you did, tell us how it operates and what it's perimeters are insofar as determining whether or not your regressiona analysis shows anything worth looking at, insofar as the matters concerning whether race or economics had a greater impact on the election?

A Regression analysis are also interesting. In looking at -- as far as your particular question -- "R" square is merely the square of the coefficient of correlation that we have been talking about. The reason we used "R" rather than "R" square is because Dr. Voyles had used "R" rather than "R" square.

"R" is on a base from zero to one and allows us to talk about a scale like -- the power of a variable in explaining

wards?

MR. BLACKSHER:

I think that is what they showed.

THE COURT:

All right.

MR. BLACKSHER:

I am not going to stipulate to every one of them. It is our impression that they didn't carry many, if any.

MR. ARENDALL:

Q So, Dr. Schlichting, isn't it fair to say that of the three black candidates in 1973, if they tended to get any votes, they tended to get them from blacks, but didn't get any appreciably?

A My understanding was that these were minor candidates, yes.

Q Exhibit 50, 1973 City Commission runoff, Greenough, using Voyles's data. What is the "R" square?

A Point three five one eight.

Q Exhibit 51, 1973 change of government referendum?

A Point six four four nine.

Q I believe that you told us that in the 1963 government change that you found no substantial relationship between vote and race, did you not?

A I can go back and check that. I don't recall having

except with respect to the Langan races in 1965 and 1969, your regression analysis doesn't attempt to show anything statistically worth while except with respect to those races?

A No, sir. What about the Outlaw one for '65; that was point seven seven, and the Luscher one, that was point seven eight?

Q That was a 1965 race between Mr. George McNally and Mr. Outlaw, and Mr. McNally had been in office, hadn't he, for a good while?

A I don't know.

Q Were you in Mobile, at that time?

A No, sir.

Q I guess, then, we get down again you don't know how to quantify factors such as Mr. McNally's conduct in office and any problems he and Mr. Trimmier and others had been having in that position?

A No, sir.

Q All of that is omitted from these statistics?

A Certainly.

Q Now, going back to what you said at the very beginning of your examination by Mr. Still, did I understand you to say that the reason that you directed Mr. Parker to use 1970 economic data in connection with certain races

and did not give an absolute mean income.

It would say from one thousand to twenty-six hundred or something. It did not say the mean income is two thousand dollars. Do you follow me?

MR. ARENDALL:

No further questions.

MR. STILL:

Thank you, Mr. Parker. That's all.

THE COURT:

All right. You may step down.

Why don't we take a ten minute break right here.

(RECESS)

THE COURT:

All right. You may examine the witness.

WILEY L. BOLDEN

A Plaintiff, taking the stand in his own behalf, and after having first been duly sworn to tell the truth, the whole truth, and nothing but the truth, took the stand and testified as follows:

DIRECT EXAMINATION

BY MR. BLACKSHER:

Q May it please the Court, this is Mr. Wiley L. Bolden. He is eighty-three years old. He was born December 30, 1892 in Hale County, Alabama.

He presently resides at 556 Bellsaw Avenue, Mobile. He is married and has three great grand-children. His education, he finished Tuskegee Normal, I guess it was called then, in those days, Mr. Bolden, in 1911.

He is presently a member of the board of directors of the non-partisan voters league and he has lived in Mobile since 1923.

Mr. Bolden, did you ever serve in the United States Army?

A Yes, sir.

Q When was that?

A Nineteen seventeen, September,1917 to March, 1919.

Q Did you serve overseas during the first World War?

A Yes, sir. I did.

Q Where was that?

A In France.

Q What was your rank when you were mustered out of the Army?

A My rank was sargeant. I held the rank of sargeant. They didn't have it classified then as it is now, but I was a line sargeant.

Q Were you decorated as a result of your service in the Army?

A Yes, sir. I was given -- I was sent something like a plaque.

Q What did the plaque say?

A It said Columbia gives to another son a new accolade of the chivalry of the Army. Wounded in action, September 4, 1918. Signed Woodrow Wilson, President of the United States.

Q And you returned to the United States, you say, in 1919?

A Yes, sir.

Q And you moved to Mobile when? 1923?

A April, 1923.

Q After you moved to Mobile, or shortly thereafter, did you attempt -- your Honor, recalling your prior instructions to me we intend to profer some evidence of how Mr. Bolden was able to register and vote and the circumstances surrounding that.

THE COURT:

Well, I don't see anything before 1950 -- anything after 1950 -- all right. Go ahead.

MR. BLACKSHER:

Q For the record, Mr. Bolden, you did register to vote in Mobile County in 1925?

A Yes, sir. I did.

Q And a white pharmacist, Dr. Ortman vouched for you and you were allowed to register because you were a veteran; is that correct?

A Correct.

Q But there were not very many other black registered voters during that period of time?

A No, sir.

Q Were the black voters who were registered during the period 1925 to say 1945 organized in any way?

A No.

Q Now, Mr. Bolden, did you know Mr. John LeFlore?

A I did.

Q Who was a Plaintiff in this case and died just a few months ago?

A Yes.

Q Would you tell the Court how you and Mr. LeFlore, when you and Mr. LeFlore first joined together in a Civil Rights organization?

A It was in April of 1925. We formed the Mobile branch -- we organized the Mobile branch for the national association of the advancement of colored people.

Q Approximately how many members did you start off with?

A Ten.

Q What kind of activities was the local branch of the N.A.A.C.P. principally involved with during the period 1925 until after the second World War?

MR. ARENDALL:

Objection, irrelevant.

THE COURT:

I don't really see any need in going into great detail. I don't want to circumscribe you too much. It is interesting, but I don't see how it will help us too much unless you have some particular point you want to make.

MR. BLACKSHER:

The only point that we want to show is that the local branch was not actively involved in the securement for blacks.....

A During that period, the N.A.A.C.P., the braches, were not allowed to participate in politics. It was against the regulations of the body -- I mean, the national body.

Q But the local branch did become active in voter registration in the second World War, did it not?

A Yes, we did.

Q Tell the Court what kind of activities the local branch engaged in?

A We engaged in the direction of our group being --

going down registering and those who could -- well, at that time, they had to be vouched for, you know about that, and you know the restrictions. That was after the Boswell amendment was declared unconstitutional, and then in 1946 -- and then in 1948 the case that came up from --went up from New Orleans through a member of the N.A.A.C.P.

Q Davis versus Schnell?

A No. That is a Mobile case.

Q Oh, I am sorry.

A Mr. Schnell was the register here in Mobile, but this man -- this man carried the Democratic party to the United States Supreme Court. The suit involved the Democratic party of the south who said it was then a private party.

Q You are talking about Smith versus Allwright?

A That is what I am talking about.

Q Were you one of the black voters referred to in Mr. McLaurin's article which is already in evidence who went, in 1944, and attempted to register and vote in the all white Democratic primary here in Mobile?

A I am. John LeFlore, Napolean Rivers,me and any number of others, Alec Herman and -- oh, any number of the older citizens, but we were debarred by it then, the then Sheriff Holcomb.

Q All right. Do you recall then the Davis versus

Schnell case striking down the Boswell amendment?

A Oh, yes, we do.

Q Thereafter, was there some other activity in the legislature, that you can recall, where the Boswell amendment or something like this was attempted to be re-established in Mr. Joe Langan, as a state legislator, fought against it?

A Yes, sir. But my memory does not serve me well enough to say who advocated that kind of legislation, but it was attempted and Mr. Langan, then a very fair minded and fine citizen, as well as one who represented the people, he opposed it.

Q Well, do you remember that that was about the time that Mr. Langan first came to the attention of the local branch as being one of the politicians who was acting in what was perceived to be in the interest of the black community?

A Yes.

Q What else did Mr. Langan do that caught the attention of the black community?

A Mr. Langan asked the legislature -- in other words, he held up -- he was then a Senator from Mobile. He was State Senator and he held up all legislation there until the black teachers of Mobile County were given equalization in salaries.

In other words, he equalized the salaries of the black

teachers of Mobile County and that, in my judgment, made him with me, especially, one of the most outstanding men in Alabama.

Q Was he thereafter supported actively by the local branch in his various election campaigns?

A Yes, he was. All blacks who realize what he -- his fairness toward them and that had -- I won't say that any way they supported to Mr. Langan because they should.

Q Did the local branch -- well, I guess it was the non-partisan voters league. Describe to the Court the difference between the local branch and the non-partisans voters league?

A During 1963, when Mr. Patterson was the governor of Alabama, then, and the N.A.A.C.P. was sued and brought into Court in Montgomery, Judge Walter Jones was the presiding Judge or Circuit Judge there, then, and he gave a judgment against the N.A.A.C.P. for a hundred thousand dollars. In other words, the chief counsel for the N.A.A.C.P. refused to turn over to him the list of its membership, because it was commonly conceited that reprisals would be taken against all those who held jobs like teachers and what-not.

So, Robert Carter was then the chief counsel for the N.A.A.C.P. and he refused and they slapped a hundred dollar fine on him and he immediately appealled the case to the

United States Supreme Court and, of course, we were held up for eight years.

Q What did that have to do with the non-partisans voters league?

A When they debarred the N.A.A.C.P., the injunction Judge Jones gave against us debarred us from activity, because our case was pending in the United States Supreme Court.

So, we went, what you might call, underground and organized the non-partisans voters league and we kept the work of Civil Rights going just the same.

Q What year was that?

A Nineteen sixty-three to nineteen seventy-one.

THE COURT:

What years were those?

A Nineteen sixty-three to nineteen seventy-one.

MR. BLACKSHER:

What happened in 1971, Mr. Bolden?

A The United States Supreme Court gave, you know, the decision -- I mean, they ruled in favor of the N.A.A.C.P. So, the N.A.A.C.P. didn't have to turn over the membership list and the fine was set aside.

Q But the nonpartisan voters league remained on and is still, today, is a separate branch of the N.A.A.C.P.?

A Yes, sir. Very much so.

Q In the time you have been with the nonpartisans voters league and before then, with the -- well, let's say 1965, and that is when you were in the nonpartisan voters league, have you and the other members ever discussed or attempted to encourage a qualified black candidate for the Mobile City Commission?

A I think we did. I am sure we did.

Q Do you recall who and when?

A Now, the cartwheel, by memory, doesn't click that well, but I do know we discussed it and some persons did run or did attempt to run.

Q You are thinking about 1973 when Ollie Lee Taylor and Lula Albert and Alphonso Smith ran?

A Oh, yes. I see I had forgotten them, but that -- yes, I think you are right. I know you are, because I remember Ollie Smith, because he is now in Florida.

Q Before then, were you successful in getting any other black qualified citizens to run?

A Not that I recall.

Q Why not?

A Well, one thing, we felt that it would be futile, because -- I mean, that year, when we knew if we ran a candidate in Mobile -- in the City of Mobile, it would be an overall thing and we didn't have enough votes to elect

anybody and, of course, we had to wait until,- in other words, our political strength was not -- we didn't feel was well enough up to advocate such a thing and I don't feel that same way now, if you are going to take it from an overall standpoint. I think it would be futile.

Q Mr. Clerk, would you hand the witness Plaintiffs' Exhibit 67? I don't think we have marked it now, but it is down there.

Mr. Bolden, I want you to look at these documents which are various affidavits signed by black persons. One of them is an affidavit by Henrietta Smith saying that she had been unable to register, because she had not passed the State voting test on August 3rd, 1964.

Another one, James Brooks, dated August 5, 1964 saying that he had been denied the right to register as a voter, because he incorrectly answered two of several different questions of government.

Similar affidavits by Joe O. Dickson.....

THE COURT:

Are you referring to the State government? I understand there were no Federal registrars in Mobile?

MR. BLACKSHER:

Yes, sir. Another one by Joe O. Dickson, dated August 3, 1964. Another one by -- well, I am sorry. Here is

a petition dated June 16, 1964 addressed to the Mobile County board of registrars signed by Mr. LeFlore and others; do you see that?

A Yes, sir. I do.

Q Concerning the tests that were being given to persons as they attempted to register?

A Yes.

Q And finally, an affidavit by a Carrie Louise Marshall dated February 11, 1965, saying that she went to the board of registrars and was asked there to sit in a separate room where negro would be registrants would be compelled to sit and take their tests, that she obeyed the admonitions of the white woman official of the board of registrars and went to the negro registration room.

Can you verify that these are records that we have taken from the files of the non-partisan voters league?

A I can.

MR. BLACKSHER:

We move their admission, in evidence, as Plaintiffs' Exhibit 67, your Honor.

MR. ARENDALL:

If your Honor please, they are clearly hearsay. I have no objection. I am satisfied there was some discrimination against them.

MR. BLACKSHER:

We offer them to show the latest date on which we could find overt .....

THE COURT:

What is that date?

MR. BLACKSHER:

February, 1965.

MR. ARENDALL:

All except the last one relate to occurrences in 1964?

MR. BLACKSHER:

That is correct, except the 1965 was a segregated registration line.

Q Mr. Bolden. That's all I have. One of the other lawyers may ask questions.

THE COURT:

Admitted in evidence, and you may cross examine him.

(Plaintiffs' Exhibit number 67 was received and marked, in evidence)

CROSS EXAMINATION

BY MR. ARENDALL:

Q Mr. Bolden, have you held any place other than that of a director of the non-partisan voters league?

A Well, we didn't have so many offices there.

THE COURT:

Have you ever been president, vice-president, secretary or treasurer?

A No. Judge, I haven't; no, sir.

MR. ARENDALL:

Q Have you been one of those who have determined who would be endorsed on the pink sheet?

A I have.

Q Have you considered that the blacks of Mobile have followed the endorsements of the non-partisan voters league as set out in the pink sheet?

A No, sir.

Q You say they have not followed them?

A If they followed them, they followed them of their own free will and accord.

Q Well, whether -- I understand that each.....

THE COURT:

The question is, though, the thrust of it is, Mr. Bolden, is it your judgement that the black voters have substantially followed the recommendations of the pink sheet?

A Yes, sir.

THE COURT:

All right.

A I do.

MR. ARENDALL:

Q In your opinion, is it proper to characterize the black voters of the City of Mobile as now constituting a block vote?

A No, sir.

Q In your opinion, would such characterization have been proper and, if so, during what periods of time?

A I don't think that -- I don't think that it had ever been so. I think that the people -- the black people of Mobile, who voted -- who went to the poles to the various wards where they voted, they voted their convictions and the non-partisan voters league put out a ballot and simply said that these are the men that we have screened and have taken their positions as to what their platform would be if they were elected to the various offices to which -- of which they sought, and the people believed in us, because we did not give them any misinformation.

MR. ARENDALL:

Q Well, is it fair to say that voting their convictions the black individual voters did what the pink sheet requested them to do?

A Most people who go to the poles now of all groups -- I feel this way about it, that most people that go to the

poles of all groups, they go there and vote, because somebody has given them some information about the attitude or the position of the candidates who is running for office and I think our people did the same thing. They didn't vote them, because we told them -- they didn't go by that sheet, pardon me.

THE COURT:

He is not suggesting coercion. What he wants to know, is do the black voters usually vote for the same candidate?

A No, sir.

THE COURT:

All right. Go ahead.

MR. ARENDALL:

Q Mr. Bolden, do you remember talking to your lawyers and I don't know which ones you talked to, but about answering some interrogatories that we put to each of the named Plaintiffs in this case?

A I guess I do.

Q Do you remember telling them how you wanted to answer those questions for yourself, telling them what you thought the answers were?

A I did.

THE COURT:

Mr. Arendall, I usually ask the lawyers to stay at

their counsel table unless they have some document they want to show to the witness.

MR. ARENDALL:

I was going to let him look at it.

Q I would like for you, Mr. Bolden, to look at interrogatory number 40-A and tell the Court whether I correctly read this.

In your opinion, is it proper to characterize the black voters of the City of Mobile as now constituting a block vote. Now, I want to show you the answer that your attorneys filed on your behalf, and there is a paragraph here where you will see that they say they thought this was an objectionable interrogatory, but look at the "A" and do they say and do you say to answer that question, "Yes".

Is that what the answer says to your interrogatory?

A I don't know. It doesn't have my name there.

THE COURT:

No. That is not the question. Does 40-A read "Yes"?

The Court takes judicial knowledge that it reads yes. I just read it there, really.

MR. ARENDALL:

Q Forty - B, "In your opinion, would such characterization ever have been proper and, if so, during what period(s)

of time,"? And was your answer to that, "B","yes, from the time that blacks were disinfranchised to the present."

Was that your answer, sir?

THE COURT:

He is asking you, Mr. Bolden, if that is the answer that appears here?

A I would like to make that a little more clear to me.

MR. ARENDALL:

Q Excuse me. Tell me whether or not that is the answer?

THE COURT:

I can see it does.

A Yes.

THE COURT:

Who are they propounded to and whom are they signed by?

MR. ARENDALL:

Judge, they were all signed by counsel, by agreement of the parties.

THE COURT:

They were addressed to Bolden and others?

MR. ARENDALL:

That is correct.

THE COURT:

All right.

MR. STILL:

Just for the record, your Honor, I believe they are signed individually.

THE COURT:

Well, let me see the answers.

MR. ARENDALL:

I beg your pardon, on the back of what I have here is your signature here, isn't it?

A That is my name.

Q And that is in that same sheaf of papers, the answers that I just asked you about?

A What does this say?

MR. ARENDALL:

That is what they call an affidavit.

A I know it is an affidavit, but what does it pertain to? Did I sign that affidavit?

THE COURT:

Is it your signature?

A That is my signature, yes.

THE COURT:

Do you recall signing it?

A I do.

THE COURT:

All right. Just one minute.

Have they been introduced in evidence?

MR. ARENDALL:

No, sir.

THE COURT:

They should be marked, for identification.

A I would like to see if I made that statement individually.

THE COURT:

Mr. Bolden, that is what it shows. These show the answers made by you and you signed it.

A Yes, sir.

THE COURT:

All right.

A All right. Then it is true that I signed it and to anything else, because of my memory I will retract that. Yes.

THE COURT:

You were born in what year?

A Eighteen ninety-two, December 30.

MR. ARENDALL:

Q Mr. Bolden, the non-partisan voters league endorsed

Mr. Taylor and Mr. Smith in their campaigns for the City Commission in 1973, did they not?

A I think so.

Q Did they endorse Lula Albert?

A I am not sure. I can't answer that. I don't remember, Mr. Arendall.

Q You knew Mr. Taylor, did you not?

A Yes, sir.

Q You did not know Mrs. Albert or Mr. Smith, did you?

A Now, just a minute.

THE COURT:

Give him time. He is an old man.

MR. ARENDALL:

Q Let's take them -- did you know Mrs. Albert before she became a candidate?

A Are these black candidates?

Q Yes, sir.

A What year was this?

Q Nineteen seventy-three.

A To the best of my memory, I cannot recall, to be truthful, and I couldn't say anything that I wouldn't stand on. I wouldn't.

So, I don't remember the non-partisan voters league endorsing these candidates and, so far as I am concerned, in

1972, I think I was a little ill then, Judge, because I went to .....

MR. ARENDALL:

May I ask counsel if they are willing to stipulate to his answers?

A No. I must say I think I had been operated on in 1972 and was in the Veteran's Hospital in Birmingham, Alabama, at that time.

THE COURT:

All right.

MR. ARENDALL:

May I ask counsel if they would stipulate that Mr. Bolden's answers to interrogatories, by saying he did know Mr. Taylor but did not know Mrs. Albert and Mr. Smith and did not support Mr. Taylor?

Well, that is all right. No further questions.

MR. BLACKSHER:

Well, I would like to say, for the record, Mr. Bolden has signed the interrogatories, but the Court will see that there were a number of interrogatories filed and each one is made up of a set of interrogatories which were drafted by the lawyers. We take responsibility for them, although they were approved by the witnesses and an appendix, in each case, of individual information and I would like to say, for the

record, that the way we interpreted the question and the interrogatory itself pertained to, as we understood the question, to whether or not blacks had voted in a polarized fashion.

THE COURT:

All right. Go ahead.

MR. BLACKSHER:

No further questions.

MR. ARENDALL:

No further questions.

THE COURT:

You may come down, Mr. Bolden.

MR. MENEFEE:

Your Honor, we would like to call Mr. James Buskey to the stand.

JAMES E. BUSKEY

the witness, called on behalf of the Plaintiffs and after having first been duly sworn to tell the truth, the whole truth, and nothing but the truth, took the stand and testified as follows:

DIRECT EXAMINATION

BY MR. MENEFEE:

There were none of this nature.

However, there was, during the runoff, the week prior to the runoff, literature that was distributed by my opponent that I considered to be racially oriented.

Q Could you describe that literature?

A Yes. It was a full page tabloid called the "Leader", and on the front of it, the full page tabloid, my picture was there and covering about a third of the page and some wording to the effect that this is the man that ran second to me. The literature was, of course, printed by my opponent and that, to me, was an indication that, in my judgment, it was racially motivated and I can go into my reasons as to why I thought so.

I had, at one time, the tabloid, but I lost it. But some of the wording, although nothing specific about race, the wording that was on the tabloid said something to the effect, help me to win the election, and the implication was that I read into it that if I did not win, this would be the representative of Senate district thirty-three.

Q And your picture appeared there?

A On the front -- there were other pictures, but on the inside, indicating pictures of campaign workers and campaign workers of my opponent, but on the front of it my picture was the only one there.

Q Do you know if this tabloid was distributed throughout Senate district thirty-three, but only in some areas?

A It was not widely distributed. There were two areas we were able to pinpoint the distribution of that literature.

Q Where was this?

A One was the Eight Mile -- Whistler area and the other one was the Chickasaw area.

Q Are those areas predominantly white?

A Yes, sir. I think Chickasaw may be virtually all white.

Q What can you tell me about the racial composition of Senate district number thirty-three?

A The composition of Senate district thirty-three is generally fifty percent white and black. It might be as high as fifty-three or fifty-four percent black.

Q Is that population you refer to?

A Population, yes.

THE COURT:

Fifty-fifty, black and white, or maybe a fifty-four - forty-eight black and white; is that right?

A Right. Let me -- because I think you are exactly right in terms of population. It might be a little high something like fifty-six or fifty-seven in terms of population in favor of the blacks.

by addressing more forcefully those issues?

A Very definitely; yes, sir.

Q Do you have an opinion as to why they didn't address those issues more forcefully if they wanted the votes?

A On the part of white candidates who actively sought or who would actively seek the black votes, in my judgement, that if that person -- if those people are interested in winning, they would not pursue that course of action, because they would have what you call a white backlash in the white community, in my judgement, yes.

Q One student of local politics, Dr. Voyles said that a substantial black vote for a white candidate would be a kiss of death for that candidate if he was forced into a runoff.

Would you agree with that assessment?

A I agree. This is basically what I tried to pinpoint in my statement. If white candidates sought to address themselves to concerns of black residents, in my judgement, they will receive a white backlash.

THE COURT:

All right. Let's knock off until tomorrow. Be here at nine o'clock tomorrow.

(COURT ADJOURNED)

A Prior to 1974, in my estimation, it would have been a waste of time and money. One would have to run, at large, in either the City or County and, given that set of facts, the chances of winning the City election or County election on the part of a black would be nill.

Q The Prichard election, City elections are at large, are they not?

A Yes, sir.

Q And many blacks have sought office for the City elections in Prichard?

A Yes, sir.

Q What is the difference between Prichard and Mobile or Mobile County?

A In the City of Mobile in Mobile County, the voting strength of blacks is substantially lower than that of whites. In the City of Prichard itself you have a black population that is in the majority. Whether that is about fifty-five or fifty-eight percent, I am not sure, but it is a majority and consequently the potential voting strength of blacks in the City of Prichard is in the majority.

A black candidate running for an election in the City of Prichard has at least an equal chance of success at being elected and I think they are good.

Q Do you know either Mr. Alphonso Smith, Mrs.

race this past election?

A We have five who actively participated. There were seven who qualified.

Q Was there a heated campaign?

A It was a very vigorous campaign. There was no issues that burned in terms of controversy, but it was very vigorous in the sense that we had five people actively campaigning for votes and, to this extent, I guess you could say heated, but not heated in terms of controversial issues.

Q Was there, to your knowledge, any door to door canvassing or offers to take voters to the polls and sort of a great deal of direct contact between the candidates and the voters?

A Yes, sir. At least one, perhaps two. I know for a fact that one candidate did offer to take voters to the polls to vote and, as well to the Courthouse to register them. We did extensive door to door campaigning and I am sure, to some extent, some of the other candidates did some, but not extensively. The offers to take voters to the polls and, you know, register voters to register.

Q Within the black community what are some of the major endorsing groups?

A I would imagine that the two major endorsing groups would be -- one, the non-partisan voters league and, two,

only reason I interrupt, the projected trial time, which is rather lengthy and if these matters are between black candidates and majority black districts, I just think we are wasting time. If you had a black and white candidate, you might have some relative issue. It is extremely interesting. I like politics, but .....

MR. MENEFEE:

Yes, sir. I was following this line of questioning to show a black perspective on the strength of the non-partisan voters league.

THE COURT:

Well, if it is between blacks, what help does it have to us?

MR. MENEFEE:

All right, sir.

THE COURT:

I think it would have some relevance if it was white and black votes or candidates.

MR. MENEFEE:

Yes, sir.

Q Mr. Buskey, do you have any opinions as to why more blacks don't seek election to the City Commission and the County Commission and the County School Board?

A Yes, I have. Running at large, they wouldn't have

a chance. The way it is presently constituted, running at large would be a waste of time and money and energy.

Q Do you think many more blacks would seek election to these offices if they thought the chances were better?

A Yes, sir.

Q We have discussed the interest that was created in House district ninety-nine by the race this past May.

There were many other races being run at the time for County Commission and other posts, were there not?

A Yes, sir.

Q In those races, County Commission, in particular, can you name any candidates that made any appeals to the black community for their votes, any substantial appeals?

A Yesterday I tried to indicate that white candidates in those races did campaign on the black communities.

THE COURT:

Let's don't go over the same thing. I remember what you said yesterday. If you have something additional to that, you may.

MR. MENEFEE:

Mr. O'Connor, would you hand Mr. Buskey Plaintiffs' Exhibit number 3, please? I am sorry, I mean number 4.

Mr. Buskey, Plaintiffs' Exhibit number 4 shows voter turn out in predominantly black wards and predominantly

white wards during elections this past May?

THE COURT:

What is the number of the Exhibit?

MR. MENEFEE:

Plaintiffs' Exhibit number 4, your Honor.

THE COURT:

All right.

MR. MENEFEE:

Q There are five wards listed as predominantly black in the lefthand column, four of them being within House ninety-nine?

A Yes.

Q The turn out figure, rate of turn out, for those four districts reflect twenty-eight point four percent for County Commission place number one and then, taking the one other predominantly black district, district number thirty-five - one zero three - one, which, I believe, lies in representative Gary Cooper's House district?

A Yes.

Q It shows a turn out of twenty-two point seven percent -- see it with the asterisk in the middle of the page?

A Yes.

Q And then for the runoff it falls off to sixteen point five percent?

A Yes.

Q It shows a difference in the runoff election from when your race was being run against Mr. Flannagan of eleven -- almost eleven percent between the black districts and House ninety-nine and the one black district we have been able to sample outside of House ninety-nine.

Do those figures agree with your general observations on voter interests in the black community?

A Yes, sir.

Q Okay. That's all on that.

I would like to ask you a few questions further about -- referring to Plaintiffs' Exhibit number three.

Again, we have predominantly black wards and predominantly white wards. On the second sheet we have turn out figures on the second sheet of it we have turn out figures for 1973 City Commission race and we see, for example, place one runoff.....

MR. ARENDALL:

I beg your pardon. What Exhibit are you looking at?

MR. MENEFEE:

This is number three. Place one runoff, which was the contest between Mr. Greenough and Mr. Bailey.

You see a turn out differential between the black wards and the white wards of eighteen point seven percent for

time.

Because of the quickness on which it was focused, I think that, to a large extent, many blacks felt that it would continue and consequently the polls were forgotten and a lot of other processes.

THE COURT:

All right.

MR. MENEFEE:

Your Honor, there will be other witnesses who can discuss more fully the Joe Langan race in 1969 and Mr. Langan, later at the County Commission in 1972. We have some turn out figures in our Exhibit number 3 that reflect blacks turning to the polls in substantial numbers.

THE COURT:

All right. You may come down.

Whom will you have next.

MR. BLACKSHER:

Mr. Joe Langan.

JOSEPH LANGAN

the witness, called on behalf of the Plaintiffs, and after having first been duly sworn to tell the truth, the whole truth and nothing but the truth, took the stand and testified as follows:

DIRECT EXAMINATION

BY MR. BLACKSHER:

Q May it please the Court, this is Mr. Joseph N. Langan. He is sixty-four years old. Presently resides at 267 Houston Street, Mobile, Alabama.

He has been a resident of Mobile, Alabama, his whole life. He is presently a practicing attorney in Mobile.

Mr. Langan, tell the Court the offices you have held during your career as a public servant in Mobile?

A Well, I served in the Alabama House and the Alabama Senate and Mobile County Commission and the Mobile City Commission, as far as elective jobs are concerned. Of course, I was on the board of education and numerous other positions and other appointive positions.

Q You were elected to the Alabama House of Representatives in 1939?

A Right.

Q And served one term?

A Yes.

Q You were elected to the Alabama Senate in 1947 and served one term?

A Well, the election was in '46 and the term began in '47 and I served one term; yes, sir.

Q And you were an elected Commissioner of the City of Mobile from 1953 till 1969?

A Yes, sir.

Q And you said you served briefly as a County Commissioner.

Would you explain that?

A Well, I served a little over one year on appointment as a County Commissioner.

Q That was in 1950 and '51?

A Right.

Q So, altogether you won, through the elective process, one term as a State representative, one term as a State Senator and four terms as a City Commissioner?

A Yes, sir.

Q And you were defeated three times at the polls?

A Yes.

Q In 1951 by Mr. Tom Johnston and that race was for the .....

A State Senate.

Q In 1969, by Mr. Bailey for the City Commission?

A Yes.

Q And in 1972 in a runoff with Mr. MCConnell for the County Commission in the Democratic primary?

A Yes.

Q Mr. Langan, do you attribute your loss in 1951 to Mr. Johnston in any way to racial factors?

A Yes, sir. I feel that that was one of the main factors in that election.

Q Specifically how did it come into the picture?

A Well, I had been rather critical of some of the racial practices in Mobile from the time I got out of the service and was elected to the State Senate regarding the bus situation in Mobile and also in the State Senate the Boswell amendment had been declared unconstitutional and they introduced a new amendment to regulate voting in Alabama and tried to cure some of the defects that the Court stated had existed in the Boswell amendment and four other Senators and myself filibustered for several days and worked until we finally defeated it by filibustering it through the end of the session of the legislature and, of course, there was other action that I had taken on helping to bring about the equalization of pay for both black and white school teachers in the Mobile County school system.

THE COURT:

The Boswell amendment was really a literacy test aimed at blacks, wasn't it?

A Yes, sir.

MR. BLACKSHER:

Q And you are saying that those actions you took on behalf of equalizing black and whites hurt you in that election?

A I am sorry, I didn't get that.

Q Those actions hurt you in 1951?

A I think, at that time, it very definitely did. From correspondence I received and from things in the legislature and all it played an important part in that election and, of course, at that time, very few blacks were voting.

Q That was still at the beginning of your political career, so to speak.

What lessons did you learn from that campaign on racial overtone issues?

A Well, I don't know. As I say, sometimes I began to realize that no matter how high the ideals you might have, sometimes you have to be a pragmatist and realize there are certain things more important to a person's economic livelihood and things of that nature. So that there are areas that you should work in that can bring about good and still don't bring a lot of clash and a lot of animosity.

Q You knew John LeFlore?

A Yes.

Q And during the time that you were on the City Commission of Mobile you had occasion, didn't you, on several occasions, to deal with Mr. LeFlore and hear his complaints

about changes that he was seeking on behalf of the N.A.A.C.P.

A That is right, sir.

Q Were there some occasions when you told Mr. LeFlore that some of the things he was asking were just more than you could provide or seek as a City Commissioner?

A Well, in several conversations with him I pointed out that I felt that there were things that the N.A.A.C.P. and other organizations were advocating that really from an ideal standpoint they were wrong and things that needed to be corrected, but as far as the black people in the community were concerned, I thought that there were other things much more important for them to attain and, therefore, the things that would really help them economically and help them to obtain jobs and a fuller life were more important than the pure ideals of what our government should be.

Q Concerning those things that you thought could not be accomplished through the political process, did you ever advise Mr. LeFlore that he should try to use the Courts to seek re-address of those grievances?

A In discussing with him, he very much believed in legal process and in proper proceeding to obtain the ends that our government established on the principal that if we do have laws that are in conflict with the constitution and denied rights to persons that are guaranteed to them, the

places to find re-address is through the Courts and not through public violence and things of that nature.

We did many times discuss if changes were needed that he should go to Court to bring about those changes.

The things that we could do within government we tried to do, and the things that we felt were issues that should be decided by the Courts we advised he should go to Court.

Q In any event, you did run successfully for the City Commission in 1953?

A Yes, sir.

Q And stayed in office until 1969; that is, four terms?

A Yes, sir.

Q Did the racial issues surface in any of the elections until 1969?

A Well, it came up some in the 1957 election. Of course, as the issues grew and time went on and, of course, they became much more the focal point of pretty near every political campaign we got into in the '60's with the Civil Rights movement and other activities and it was brought to the attention of more and more people and people began to make their decisions based a lot on their position on racial questions.

Q Do you think that the electorate made their decisions as between you and Mr. Bailey in 1969 along racial lines?

A I think it was a determining factor in the election; yes, sir.

Q The Court has just inquired of the last witness about the fact that there appeared to be a drop-off in the black wards in support of you in that 1969 election against Mr. Bailey.

Would you explain what happened?

A Well, there was an element in the black community here that became very active about that time in the Civil Rights movement in the community and they took the attitude that anyone who didn't do everything that they wanted done was a racist and in their papers they condemned me for being a racist and they got out and worked to try to -- their philosophy became that there is no one in the City Hall or no one running for City Commission who is worth voting for, and, therefore, don't vote.

They put on a very active campaign to keep the people from voting. As a matter of fact, many people were standing in front of the wards taking pictures of people that went in and I was told by many people that tried to go vote that they were threatened.

Q Was this the NOW organization that was associated with Nobel Beasley?

A Yes.

Q Did Mr. LeFlore and the non-partisan voters league endorse you in that election?

A Yes.

Q Did they attempt to rally the support of the black community for you?

A Yes.

Q Would the Clerk please show Mr. Langan Exhibit 61, the Exhibit that we were looking at a moment ago. Your Honor, Plaintiffs' Exhibit 61 is in one exhibit, a large number of newspaper articles that we have copied in exchange with the Defendants and I would like to try to use them as one Exhibit, if there is no objection, just to simplify matters.

THE COURT:

Fine. Let's take a fifteen minute break here.

(Plaintiffs' Exhibit number 61 was received and marked, in evidence)

(RECESS)

THE COURT:

It was only about seventy-five percent of what voted in 1965.

Q And it is also true that the voter turn out in the black wards were substantially less than had been expected?

A Yes.

Q And that was attributed, you said in large part, to this boycott that an organization in the black community organized?

A I think that had definite effect on it. Of course, as I say, the total vote was down from what it had been; it was down even more so in the black wards.

In other words, the wards I just enumerated, compared from 1965, they dropped from six thousand to three thousand some odd votes, about twenty-eight hundred vote decrease.

THE COURT:

Almost half less?

A That's right.

MR. ARENDALL:

Would you give me those figures?

A In the wards that I enumerated in 1965, in those wards I received six thousand four hundred and seventy-nine votes. In 1969 I received three thousand six hundred and ninety-seven votes.

MR. ARENDALL:

Thank you.

MR. BLACKSHER:

Q What other factors were, in your opinion, accountable -- accounted for the total reduction in voter turn out?

A Well, we had just had the hurricane the day before. I think that accounted for some of the people not voting, plus the fact that I think that there was a certain amount of apathy. More people were satisfied with the operation of the City Commission than what they had been in the term between '61 and '65.

I think there has been a lot of criticism of the operation of the government between the '61 and '65 term and, therefore, more people were interested in bringing about a change where in 1969 they were fairly well satisfied with the governmental operation and, as a consequence, more people go to the polls to vote against people than what they do to go to the polls to vote for people. As a consequence, there is not a lot of opposition to the people in office and you won't have as good a turn out as they do when you have that opposition.

THE COURT:

The interest of change must have not been directed against you in '65. It must have been somebody else?

A Yes, sir.

MR. BLACKSHER:

Q In fact, Mr. Bailey was your only opposition in the election; is that correct?

A In '69. In '65 there were four or five that ran against me, at that time.

THE COURT:

Were any of the incumbents defeated in 1965?

A Both of them other than myself; yes, sir.

MR. BLACKSHER:

Q The hurricane you are speaking about was Hurricane Camille, of course?

A Yes.

Q Explain specifically how that reduced voter turn out, in your opinion?

A Well, it had caused some slight damage around the Mobile area and also a number of people that owned homes across the bay had damage from water, damage along the waterfront there, and many people had gone over to check. In other words, it was the first day they got to go across the causeway to check on their property and there were a lot of people cleaning up limbs and debris and things around their home where the wind and rain and everything caused debris.

I think they begin on page forty-eight and page forty-nine.

A Of course, there are some write ups there that concern it. The first ad here, it looks like is one of mine on page or part of one of mine on page forty-six.

Q This is your ad?

A Yes. And then forty-seven is part of my ad and forty-eight is an ad of my opponent, yes.

Q And so is forty-nine?

A Yes.

Q And fifty?

A And page fifty.

Q All right, sir. Page forty-nine is an ad that shows you, a picture next to that of Mr. LeFlore, and says, "Will you let this pair run your City for another four years?" referring to Mr. LeFlore as a person that was appointed by you to the Mobile Housing Board?

A Yes.

Q Did that kind of an ad cost you votes in this election?

A I don't think there was any question. It would have cost me votes in white wards, yes.

Q You were, for a certainty, during that election, were tagged, as it were, with the black votes; is that correct?

A Yes.

Q Nevertheless, you say you believe you could have won if you had had a solid black turn out?

A Yes. If the black vote had turned out any where near the number that had turned out four years previously I would have had a plurality in that election.

THE COURT:

Let me ask you a question.

A Yes, sir.

THE COURT:

Now, you started running for City Commission in 1951?

A Fifty-three.

THE COURT:

Fifty-three. You had two previous elections before the '65 election?

A Yes, sir.

THE COURT:

When did the black vote first become a significant factor in elections.

A It was beginning to build up a little bit in '57. Actually it was '61 when they were beginning to put on some voter registration programs.

THE COURT:

Do you have any recollection of what the total

didn't quite work out.

Q Is it fair to say, on balance, the major factor contributing to your defeat was the racial issue?

A That and apathy, the people not voting.

Q Nineteen seventy-two you ran for the County Commission and got into a runoff with Mr. McConnell in the Democratic primary, which you lost, correct?

A That's right.

Q Would you say that race and racial issues played an important role in your defeat there?

A I think it played an important role. However, you had there an entirely different constituency and there were many other factors involved in that election.

In other words, there were many communities in the outlying communities, the City officials of those communities I had opposed in trying to work out fiscal matters that would have been to the benefit of the City of Mobile and there were areas that I had brought about the annexation to Mobile that had surrounded those communities and, therefore, they were fearful -- and I had taken the stand that the better and most efficient kind of government was a metro form of government, and they were fearful of that and, as a consequence, I had a lot of opposition in these communities that had nothing particularly to do with race.

THE COURT:

What year was that election?

A Nineteen seventy-two. But the racial issue, as I say, it was played up and my opponent did use it as one of the main thrusts in the campaign and, particularly in these communities I am talking about, many of which were the people that had fled from the City to get away from the racial situation and it added fuel to the fire. I think the racial issue did play an important role in the campaign.

Q For the record, if you will look at that Exhibit 61 again, pages fourteen, fifteen, sixteen, seventeen, nineteen, twenty-one, twenty-two, twenty-three, twenty-five and twenty-six, and that's all I see relating to Mr. McConnell's ads; can you identify them as ads from that campaign?

A Yes, sir. As I say, you can see this many of them -- of course, a lot of them were just absolutely -- well, taken out of context, but, as I say, a lot of them were thrusted toward the racial question.

Q Now, there was no black boycott of the polls in 1972?

A No.

THE COURT:

Black what?

MR. BLACKSHER:

Boycott, your Honor.

Q How do you distinguish the results in 1969 and 1972?

A Well, as I say, I received, within the City, a good vote. It was just a question of, as Mr. McConnell here pointed out in one of his ads in the first race, in that election he enumerates two, four, six, eight of the group of wards that I enumerated awhile ago.

Q As predominantly black?

A Yes, and in this election against Mr. McConnell I received thirty-seven hundred and twenty-six votes; whereas in the '69 race I only received thirty-six ninety-seven in all of the black wards. So, as I said, had I gotten this kind of vote then in the '69 election, it would have made the difference.

Q My point is, it didn't seem to do you any good in 1972?

A No. It did not. It was a different kind of constituency and it involved other issues and problems I had created for myself in those outlying areas.

In other words, when I had moved out of the limits of the City of Mobile and brought in that opposition, plus the fear of the people of Chickasaw, Saraland, Satsuma, Mount Vernon, Bayou la Batre, and so forth. In other words, the people in office down there had felt that I was trying

that you think you could have won in the City wide race and I guess you are saying in this County wide race, even though you were tagged with the black vote, is that what you are saying, other circumstances being different?

A Yes. I would say if we turned back the pages of time to when I ran for State Senator, something back in those times, when I hadn't been involved in some of these issues with the smaller communities and had brought about changes that were detrimental to them where I could have gotten any kind of break at all in the County and then with a good vote in the City I could have been elected.

Q Could a black candidate in a City wide or County wide race get elected?

A Well, so far, they haven't and it is most difficult to see -- I don't know whether circumstances will be changing, but so far none has been.

Q You are not willing to express an opinion on it?

A Well, I don't think they could. I mean, the evidence speaks for itself. They haven't been. So, I can't conclude other than the fact that they couldn't be, because there have been several black candidates who have run for County wide position who were iminently qualified and should have been and could have been elected, but who were not. So, as I say, I feel that the opportunity had been there.

There were men, as I say, that were well qualified running for school commissioner and things of that nature who were not elected and so, therefore, I just feel they could not, as yet, be elected in Mobile County.

THE COURT:

Mr. Langan, has there been somewhat of a polarization of votes and is it more or less true or not that with polarization that is difficult for black candidates to be elected and increasingly difficult for white people to be elected in black majorities?

A Yes. I think so. As I say, I think it, of course, depends a lot on the person.

THE COURT:

I guess the thrust of my question is has there been somewhat of a marked polarization?

A Yes. I think there has been some break down, although, in some of your areas and the schools and younger people, there have been blacks that have been -- blacks that have been elected in communities that were mainly white, like the University of South Alabama. I mean, there have been many people out there and I was out .....

THE COURT:

You mean in school politics?

A Yes, sir.

THE COURT:

All right. You expect that to translate into .....

A Yes. I think there is a change taking place. I think possibly Murphy High School is a majority of white students there and yet their president of the student council for the coming year is a black person and the president, last year, was a white person. I spoke at the change over from one regime to the other and, as I say, there, I think, it shows that the students are willing to elect a person irrespective of their race.

MR. BLACKSHER:

Q Mr. Langan, I don't want the record to seem to indicate that the non-partisan voters league in these black communities in general supported you just because of what you did in the 1949 legislature for equalizing the pay of the black teachers.

Were there specific issues that you supported that had special uphill to the black communities during the '60's when you were a City Commissioner?

A Well, I think no matter whether it is a psychological or ideological or economic benefit, I think most people do vote for people because of something that either they get or something they do.

I think, of course, that there were many people in

the black community that voted for me, because while I was in the City Commission we paved many streets in black neighborhoods who never had a paved street before and put water and sewer service in those areas that didn't have it before and parks in those areas that didn't have parks before. I think there are many things that happened or that we had pledged ourselves to do that brought about a vote in those communities.

Q Were you consistently endorsed by the non-partisan voters league and, of course, they didn't come on the scene until when, as an organization?

A Well, it was on up in the latter part of the '50's before they really became real active. As I say, they had participated before, of course, but they didn't have the strength.

There hasn't been many black voters in the community due to the restrictions on registration and other things and it was only after some of those things were broken down and they were free to get registered to vote.

Q What about the so called pink ballot? When did that first appear?

A I don't know exactly when.

Q Were you ever endorsed -- you were, weren't you, on the pink ballot?

A Yes.

Q Can you describe to the Court the process that you went through to ask for and obtain that endorsement?

A Well, I didn't ask for it. They endorsed me without my asking for it and they, just like the newspapers or other groups, they set up a ballot on which they marked the person that they felt should be elected to office and I was one of those that were on the ballot.

Q Did you contribute to the non-partisan voters league?

A I paid a contribution to them to help pay the expenses. In fact, they told me if I would make a contribution they would appreciate it and I did.

Q And it was your understanding that it was made for the printing and the distribution of the ballots?

A That's right.

Q How effective, in your opinion, was the non-partisan voters league and its pink ballot in delivering -- if we can use that word -- in delivering the black vote in Mobile?

A Well, it is difficult to say how effective it was. I would say that generally whoever's name were on there within the black community obtained an outstanding vote.

Q Was there a period of time when that -- when the influence of the pink ballot was greater than at others?

A I think in the early days of voter registration and all and before the Civil Rights movement really got into a big swing, up in the middle sixties, I think that it had -- the older Mobilians and the people in the black community that knew each other and lived here together and they worked real closely together and they were very effective.

As I say, as time went on and you had some of the young people and other people from out of town that got into the black community and began their own agitating and their own small groups, I think they began to split up its effectiveness, because you had a certain amount of split off among some of the younger black people in the community.

Q I think you have referred earlier to the fact that incumbents were having problems generally, at one point, in the sixties?

A As I said, usually people will go to the polls and vote against somebody. In other words, they will be against an incumbent and, therefore, they will go to the polls and vote, because they have antipathy towards somebody where, otherwise, if they are pretty well satisfied with the way government is going or if there is nobody particularly involved -- in fact, that sheet I had a moment ago with regard to the 1969 election. In that election there were

THE COURT:

You gentlemen might want to stipulate to that or study it and come up with some other figures.

All right. Whom will you have next?

MR. MENEFEE:

Mrs. Lonia Gill.

LONIA M. GILL

the witness, called on behalf of the Plaintiffs, and after having first been duly sworn to tell the truth, the whole truth, and nothing but the truth, took the stand and testified as follows:

DIRECT EXAMINATION

BY MR. MENEFEE:

Q This is Mrs. Lonia M. Gill, fifty-eight years old and lives at 2854 Whitlar Street and married and mother of two children. She attended Mobile County Training School and Tuskegee Institute. She has been a resident of Mobile County all of her life.

She is executive secretary of the A.M.E. Zion Church; is that correct, Mrs. Gill?

A That's right.

A Some of the campaign literature?

Q Yes, ma'am.

A Yes.

Q And Mr. Alexander's carried his?

A Yes.

Q Do you think it is a fair statement to say that Mr. Alexander is known as an opponent of busing and an associate of Governor Wallace?

A Yes. Sure.

Q Mrs. Gill, is it fair to say that most of your support in that election came from the black community?

A I can't say that in the runoff. I don't know that most of it did or not. I really don't know, because I feel that I was supported by both, but naturally I am sure that most of them came from blacks, I believe.

Q Mrs. Gill, about how much money did you spend in your school board race?

A I don't have the figures with me. It couldn't have been too much, because I didn't have too much. I just had enough to take care of all of my obligations.

Q You are talking about maybe a couple of thousand dollars?

A Well, something like that. Perhaps two thousand dollars, if that much.

Q I see. Did you use any radio or television ads?

A I did. I was on radio and television quite a bit. This was why I can say no one really had to wonder who I was.

Q Did you have to pay for those spots or were they public service?

A No. They was donations from friends.

Q I see. Do you have an opinion as to whether your campaign created much interest in the black community and whether you received substantial support within the black community?

A I think it created quite a bit of interest. Now, when you say in the community, do you mean the County community, since this was a County race?

Q Yes, within the County.

A Within the County community. I think it did, but not as much as it should have, but it did create quite a bit of interest.

Q Were you endorsed by the non-partisan voters league?

A Yes, I was.

Q Did you receive endorsement from the voters registration organization?

A Yes, I did. Would you allow me to say that even the Mobile Press Register endorsed me.

Q From your experience, do you have an opinion as to

whether or not a black running, at large in the community in Mobile County, has a reasonable chance of winning an election against a qualified white opponent? How would you describe the chance of a black citizen?

A Personally, Mr. Menefee, I would think that the chances would be very slim, really.

Q Would you also have that opinion for running at large in the City of Mobile?

A Yes, sir.

Q Do you see a great deal of difference in terms of the racial issue between Mobile County and Mobile City?

A It is almost equal. I have had a chance to cover the County even before the race, and I have known the City, you know, all of my life. I don't see very much difference in the County and the City.

Q Do you know Dr. E. B. Goode?

A Yes, sir.

Q Dr. W. L. Russell?

A Yes, I do.

Q And Mrs. Jackie Jacobs?

A Yes.

Q These were three previous candidates for the school board and received substantial support from the black community. Were they well known in the black community?

A I would think so.

Q All three of those candidates also gained a runoff against a white opponent, just as you did?

A Yes, sir.

Q Do you know a Mr. Alphonso Smith, Mrs. Lula Albert or Mr. Ollie Lee Taylor?

A Not personally, but I know of them.

Q They ran for the City Commission in 1973.

Were they as well known in the black community as the previous list of blacks, black school board candidates?

A I can't say yes or no to that, simply because I don't know that. Because I don't know everybody, but I really don't believe that they are.

Q Mrs. Gill, if it was necessary to raise approximately twenty-five thousand dollars to run a credible race for the Mobile County Commission or the City Commission, do you think a black candidate, would be black candidate, could raise that kind of money and would enter the race?

A I don't know. I doubt seriously if a black candidate could raise that kind of money, thirty thousand dollars or twenty-five thousand dollars.

Q Would you be willing to undertake a race?

A Not County wide or City Commission either, for that matter.

Q All right. What else?

A After that, well, we dealt with Judge W. Brevard Hand, I think. I happen to have served as chairman of that bi-racial advisory board. I have served in Mobile City as Mobile County wide president of the P.T.A. and then served as a Mobile County wide president of the P.T.A. and then was elected State president of the P.T.A. and I have served on so many committees.

I have worked for the City of Prichard, having been appointed the first black department head as director of the community development program in the City of Prichard, and the member of the board of adjustment. I was also a member of the board of advisory committee out there in Prichard and one of the trustees of the formerly sixth district hospital when it closed. It was the Keller Memorial Hospital and it was just any number of things associated with Mobile or with Mobile County.

I could go on and on. I am not a newcomer. I have been in Mobile and Mobile County all of my life and a lot of people know me.

Q And you have a substantial support of whites in your race, did you not?

A I think I did. I really believe I did, not being in a position to actually know how many votes I got, but I believe

A No, Mr. Menefee.

MR. MENEFEE:

That's all.

THE COURT:

You may come down.

MR. MENEFEE:

Your Honor, we would like to call Mrs. Jerre Koffler next.

JERRE KOFFLER

the witness, having first been duly sworn to tell the truth, the whole truth, and nothing but the truth, took the stand and testified as follows:

DIRECT EXAMINATION

BY MR. MENEFEE:

Q This is Mrs. Jerre Koffler. She resides at 4208 Rochester Road and is married and the mother of two children. She attended the University of Alabama, Springhill College, University of South Alabama, and has lived in Mobile County since 1954 and presently employed at public relations counsel.

Mrs. Koffler, is that correct?

A That's right.

Q Mrs. Koffler, did you run for the school board in

A That's right.

Q Mrs. Koffler, down at the bottom, would you describe the layout of the ad at the bottom?

A At the bottom. That is May 2nd block vote, names the wards, and there are four candidates listed there.

Q What is the import of that? What is the .....

A I think it is trying to show that certain block areas that the candidates who have the most votes got the black vote and the candidates that have the less amount of votes.

Q You were one of the candidates that got some of the most votes in a black area?

A Yes, sir.

Q Can you tell me something of your relationship with the black community or education in the Mobile area? Why did you receive such support from the black community?

A Well, I guess it was because I was willing to see if there was some way we could make the April Supreme Court decision work in Mobile County. I was anxious for the school board to get on with the business of educating the children and not fighting a losing battle against the Supreme Court of the United States. And I believe that was coincided with what these blacks wanted to do and what a number of whites wanted to do.

Q Do you have some comments to make on -- well, for

example, in this ad number one "Signed agreement with N.A.A.C.P. to achieve total integration and total busing"?

A That was one of the things that I tried to take to Court. I did not sign any agreement to achieve total integration or total busing, nor do I think any agreement signed by anyone would be any different, whether it meant to start busing or stop busing. I did not sign any agreement with anybody.

Q Would you describe some of your activities in trying to ease this integration process, please, ma'am?

A Can I take a few minutes to go through that?

MR. ARENDALL:

If your Honor please, it seems to me we are going awfully far afield here.

THE COURT:

Yes. The thing you are showing is some identification with blacks, a racial factor. It would be interesting, but I don't think that would be a great deal of help.

MR. MENEFEE:

Okay, sir.

Q Mrs. Koffler, during the 1972 campaign, did you receive any threatening phone calls?

A Yes, I did.

Q Was this a common occurrence?

A I would get phone calls in the middle of the night saying, "Where is your nigger loving wife?", and my husband generally answered this, because I got a number of threatening calls of that same kind and he would say, "She is sound asleep", and that would stop that, but that went on for about three months.

Q Mrs. Koffler, is it fair to say that race was a major issue in your campaign?

A I would think so.

Q Do you think the term, "block vote" has racial connotations as used in Mobile County politics?

A As used in this particular ad, I would say it did.

Q Tagging you with a block vote and certain racial identification?

A I would think so.

Q Mrs. Koffler, have you been active in other political campaigns?

A Through my work and prior to my work, yes, sir.

Q Would you describe the period of time in which you have been active in these political campaigns?

A I think the first real political experience I had was the Brewer - Wallace governor's race, and then, in my school board, and then I went to work right soon after that and we have handled some political clients in our work.

Q As recently as this past May?

A Yes.

Q Mrs. Koffler, from your experience, do you have an opinion as to the prevalence of race as a campaign issue in Mobile County, Mobile City politics; is it a major factor?

A That is a hard question to answer. I would say that, in my particular race, it was a big factor, because of the circumstances. I noticed a little bit of it in this last May race.

I think that if a candidate addresses himself to a specific black issue that he is liable to or she is liable to run into a little bit of race politics.

Q Is it always a potential issue even between two white candidates, if the candidates want to play on that?

A I can't say that it is always a potential issue. It depends on what the issues are.

If the issues are that such it causes a rift, yes. It can be kind of potent. There are many races, I guess, that doesn't have any kind of racial discrimination in them.

Q What is your religion, Mrs. Koffler?

A I am Jewish.

Q Was that an issue in your campaign?

A No, it was not.

Q Do you know whether -- from your experience, has

religion been an issue in campaigns?

A I have never come across it.

Q What about campaigns exploiting possibly national origin, against ethnic groups, was that ever an issue in Mobile County politics as you have observed?

A The only ethnic issue that I have come across is the black - white. There might be some, but I just don't know about it.

Q Is there any issue in Mobile County politics that you have observed in recent years that has the pervasive effect that race has?

A Unless it would be crooked politics.

Q Do you think race will also be an issue if a black candidate runs against a white in our present situation?

A I would like to say I wish it weren't, and I hope it isn't and that we have outgrown it, but from a few things that happened in the May primary, I don't believe we have yet gotten to the point where we can say race is never an issue.

Q What sort of thing did you see in the past primary?

A There was another block vote against a candidate that was run in the paper.

Q What race was that?

A It was one of the District Court Judge races.

Q Was that in the Loveless - Kearney race?

A Yes, it was.

Q Was there an attempt to tag one of the candidates with the block vote?

A Yes, sure was.

Q Where were those ads run?

A I saw, and this is a rather funny place to see it, I saw one in the Mobile Beacon and I believe one was -- somewhere right in the County newspaper. I am being evasive, because I was out of town for a week of the runoff and I have only seen them clipped and I am not really sure which papers they were run in.

Q Do you know of any other racial campaigning this past May?

A No, I don't.

Q Mrs. Koffler, to what extent or how directly can white politicians address issues of particular concern to the black community? Is there a certain point in which it becomes a political liability to speak of issues of particular concern to blacks?

A Yes. I would think, at a certain point, it could be a liability.

Q Can you give me any examples of perhaps this past May any of the candidates who might have addressed issues of

A Never specifically. In fact, I don't recall ever meeting with a non-partisan voters league member, per se.

Q Did you make any contribution to the non-partisan voters league?

A No, I did not.

Q How would you describe the chances of a black candidate would have running, at large, in Mobile County and Mobile City against credible white opposition?

A Well, in my opinion, it would be kind of a rough race for them.

Q If you felt that your chances were similar, would you run?

o I don't think so; no.

MR. ARENDALL:

That is irrelevant.

MR. MENEFEE:

Q What is your estimate of and experience of running for the Mobile City Commission under the present, at large, system?

A I can only tell you what it cost for me to run and I would imagine to run for the City Commission it cost me five thousand dollars. So, I would say to run a credible race for City Commission would cost anywhere between ten thousand and on up. I am sure there are some candidates that

Q During the time that you have familiar with it, has the non-partisan voters league complained to the government here in Mobile that blacks aren't appointed to various City boards and committees in fair numbers according to their representation in the population?

A Yes, sir.

MR. BLACKSHER:

Would the Clerk show the witness Exhibit 67? One minute, please. I have the wrong Exhibit. I am sorry, it is 64.

Your Honor, what we have here in Plaintiff's Exhibit 64 is the summary of the City committee appointments that have been provided us by the defendants in the course of discovery proceedings. I would like to move its admission in its present form having been exchanged with the Defendants.

THE COURT:

All right.

(Plaintiff's Exhibit 64 was received and marked, in evidence)

THE COURT:

Let me ask you a question about this, you have total members and total prior members. Can you explain that?

MR. BLACKSHER:

Q I am talking about the league.

A The league -- well, many of them.....

Q Isn't it a fact, Reverend Hope, in the course of your connection with the league, its endorsement has been actively sought by candidates over the years that you have been connected with it?

A Yes, sir. Definitely so. I explained that to start with.

Q And wasn't that true in the last City Commission race in 1973?

A Yes, sir.

Q Every candidate in the race sought your endorsement, didn't they?

A I believe all of them did.

Q And were anxious to have as many black votes as they could get, weren't they?

A Yes, sir.

Q And over the years your success in getting black votes to go along with league endorsements has been proved by the efforts of candidates to get your endorsement, isn't it?

A Yes. To a certain extent.

Q All right. Now, did I understand you to say that what the league did was to try to endorse only people whom, in their judgment, would represent all people, black or white?

A Yes, sir.

Q In your opinion, has the league endorsed only such people?

A In my opinion, they has; yes, sir.

Q So, in your opinion, every candidate the league has endorsed would have been, if elected, a fair representative of both black and white?

A That was our motive.

Q Is that your opinion of the facts?

A Yes, sir.

Q Now, then, you have had notable success in electing candidates that the league has supported, have you not?

A Yes, in some instances.

Q Now, as a matter of fact, in the Greenough - Bailey race the league originally supported Bailey, didn't they?

A No, sir.

Q Who did they support?

A Didn't they support Mr. Greenough?

Q Well, let's put it this way -- I can't answer your question.

Let me ask you this. Didn't the black vote in effect put Gary Greenough in office?

A I wouldn't say the black vote alone, sir.

THE COURT:

Was it the difference?

A I believe so.

THE COURT:

All right.

MR. ARENDALL:

Q Was it also the difference in the Mims race? Could Mims have been elected without it?

A Well, that was the reason we endorsed them, in order that we would support those men who we felt would represent all of the people and then those who we endorsed we would ask the league to support them, but remember, the league didn't always support wholeheartedly who we endorsed.

Q I think you had better explain what you just said to me. Did I understand you to say that the league didn't support wholeheartedly support or was it the blacks?

A The blacks.

Q In the last race Mr. Doyle didn't have opposition, did he?

A No, sir.

Q So, there wasn't any question there of solicitation?

A No, sir.

Q Now, you were talking about the inability of blacks over the last six or eight years getting elected in the County wide races.

No further questions.

THE COURT:

Will you put witnesses on just what you have been over the composition in the appointing authorities?

MR. ARENDALL:

Yes, sir.

MR. BLACKSHER:

One question, your Honor, that I would like to clear up.

THE COURT:

Go ahead.

REDIRECT EXAMINATION

BY MR. BLACKSHER:

Q Reverand Hope, in answering Mr. Arendall's questions, did you mean to say that every candidate that the non-partisan voters league has endorsed has turned out to represent the interest of the black community fairly?

A In recent years they have.

Q How recent do you mean when you say recent years?

A In this last election and maybe the election prior. I think, in my opinion, they have done a very good job in carrying out their obligations toward trying to be fair to all people.

Q Is that your opinion or the opinion of the entire league?

A Yes. That is the opinion -- that is what I am trying to speak for. They feel that the candidates that they have elected here in recent years has done a very good job along that line.

Q Reverand Hope, has the non-partisan voters league ever sought to encourage or to file a candidate of their own from the black community .....

MR. ARENDALL:

Objection, not in rebuttal.

THE COURT:

I will let him ask him.

A I beg your pardon, sir.

THE COURT:

You may answer.

A It has been very far between. We haven't had too many candidates who are black to run. I would think because they felt that they didn't have a chance to win, but Mr. LeFlore, he ran, himself, I believe for the Senate. Not that I believed that he believed that he was going to win the race, but to encourage blacks to prepare themselves or run for these different offices.

MR. BLACKSHER:

That's all, your Honor.

THE COURT:

You may come down, Reverand.

Whom will you have next?

JAMES SEALS

the witness, having been called on behalf of the Plaintiffs, and after having first been duly sworn to tell the truth, the whole truth, and nothing but the truth, took the stand and testified as follows:

DIRECT EXAMINATION

BY MR. MENEFEE:

Q This is Mr. James Seals. He is forty-eight years old. He lives at 404 Palmetto Street. He is married and has four sons and holds a masters in music education. He has lived in Mobile County all of his life. He is an instructor of music at Bishop State Junior College and he works with the Mobile Jazz Festival and has been active in his neighborhood, which is often called "Down the Bay Neighborhood"; is that an accurate statement, Mr. Seals?

A Yes, it is.

Q Mr. Seals, have you spent most of your life in the down the bay neighborhood?

A Well, it has been a problem since this -- around '69 or '68. That is when the renewal started, I believe.

Q Still no remedy to that problem?

A I don't know if it is being resolved, at this time, or not.

Q Mr. Seals, in the course of our conversation the other day you mentioned that you voted at all Saints Episcopal Church?

A Yes.

Q Is this a predominantly white church?

A Yes, it is.

Q As a black person, have you ever felt any reluctance in voting there or have members of your family or community?

A Well, I don't feel reluctance now, because I guess I have gotten use to the idea because of all of my places of voting. First I voted on Pillans Street at the VFW and now on Ann Street and all of the places I have voted since I have been voting have been predominantly white places and I guess I have gotten use to the idea.

Q Do you think it deters some of the people in your neighborhood?

A I would imagine it deters some in going to a predominantly white place like that.

Q Has the increased presence of black poll workers

made voting in recent years -- made the voting facilities seem more available and attractive to black citizens?

A Yes. I have spoken to some of the people in my area and they did feel that since the poll watchers were mixed that they had more ease and they felt a little differently about going to the polls, because people generally feel that if they go places where they are not many of their kind there is a reluctance about going.

Q One last point. You have been active in your neighborhood for some time and a leader in your community organization and you expressed interest to me in this litigation.

Do you think if single member districts were created in your neighborhood that you might offer yourself as a candidate for City council or City Commission under certain circumstances?

A If it was changed?

Q Yes, sir.

A Yes, sir. I do feel that I would.

Q You wouldn't under the present system?

A No.

Q Why?

A Because it would be very difficult to win and I don't think that I would like to sit myself as a loser from

Q Not all of that being City money? A great deal of it being Federal money, wasn't it?

A Right.

Q And by and large the Mobile Housing Board since it is the recipient of the Federal funds, is subject to the overriding authority of their Federal authorities, is it not?

A Yes.

Q Now, I believe you have told us that you had been to the City Commission one or more times in connection with problems you have in your area; is that correct?

A Several times.

Q Which commissioners have you met with?

A With our present commissioners, I have met with all three.

Q And the previous commission, with whom did you meet?

A Each time that our delegates went before the commissioners, all three commissioners were present.

Q About how many times would you say that your delegation has been down to the City Hall and met with the commissioners since May of 1967?

A At least four times since 1967.

Q And they have been readily available to you to meet with your delegation, haven't they? You had no difficulty in getting heard?

A We had no difficulty at the meetings, no.

Q With the exception of this matter with the park, you have actually accomplished everything that you had sought to accomplish except a part of the area has some problem with drainage?

A The park and the schools, there were two.

Q Well, the schools are subject to Judge Hand's order.

A Well, you see, we were involved in that survey and it was made of the down the bay area.

THE COURT:

I think you can forget the school. That is out of the City's hands on a petition from the black people.

MR. ARENDALL:

Q As to the park, didn't I understand you to say that you now feel that you have enough people down there to actually get built the park that is part of the major plan?

A But it is very difficult to discuss the park without mentioning the school, because it comprises one big area and we were told that the whole area was owned by the housing board, that the school board was suppose to purchase one part of it and the City the other and, to our knowledge, this has not been done. So, it is very difficult to talk about the park and divorce the school when it is one large acreage.

Q Well, let's try to do that, because there isn't

anything, Mr. Seals, that the City Commission can do about that, or even the school board can do about that.

MR. BLACKSHER:

If your Honor please, I object to counsel characterizing that point. We will be glad to submit to you briefs providing you what the legal situation is. I understand we don't want to get into it in detail, but I object to that characterization.

THE COURT:

Well, it may be that the position that the City takes in that other hearing, but I think we will have to take judicial knowledge that the City, by itself, cannot do anything. It is subject to this Court's order.

Whatever explanation you want and I am certainly not going to try that case. Thank goodness that is not mine. But the City Commissioners hands -- I think we have to recognize is tied to a large extent by the action of the Court in that law suit.

Now, if you want to show some discriminatory purpose or motive that the City had in that suit, I want you to feel free to do it, so far as it relates to the park.

MR. ARENDALL:

As a matter of fact, Mr. Seals, the City of Mobile doesn't run any schools any where, does it?

A No. The City does not.

Q That is done by the Mobile County School Board?

A That's right, but there is another problem, if I may.

Q Sure. Go ahead.

A The housing board now wants to sell to private ownership the land that was taken for the school site. See, that is another problem, because the land was taken for a school site and now if it is resold for private owners, I think it is unfair.

Q That is the housing board and that isn't the City Commission and that is subject to Federal supervision, isn't it?

A I guess so.

Q Have you made any representations to HUD or HEW?

A Just the housing board.

Q And what response did you get from the housing board?

A The action is still pending on it.

Q They have to take it up with Atlanta first, I think, don't they, and then Washington?

A More than likely.

Q All right. Now, as to drainage, drainage in a whole lot of parts of Mobile, to your knowledge, have problems with drainage, don't they?

A I would suppose so.

Q Are you aware of the on going efforts of the City of Mobile to effectuate a major drainage program?

A Yes, I am.

Q Is it fair to say, then, that you really not only have had access to the City Commission and have been heard by them as to every matter that you have sought to bring to their attention, but that with the essentials of the park to whatever extent the City has control over that, that is the only thing that you haven't gotten what you wanted; is that right?

A Well, in my case, yes.

Q There are, as you said to us, black and white poll watchers at all Saints Church, are there not?

A There are.

MR. ARENDALL:

No further questions.

THE COURT:

Any further questions?

MR. MENEFEE:

No, sir.

THE COURT:

All right. You may come down.

Whom will you have next?

I am going to put Dr. Voyles on as a witness and let him testify and he will be subject to full cross examination. They have his thesis and it speaks for itself.

THE COURT:

Well, he has the right to call anybody that he wants to and limit -- really, now, under the Federal rules, the question of vouching for a witness is about out the window. The Court takes the testimony and weighs it. The old limitations -- we are particularly familiar with vouching as to a witness has certainly been severely reduced and we will limit cross examination and then you can put him on.

JAMES E. VOYLES

the witness, after having first been duly sworn to tell the truth, the whole truth, and nothing but the truth, took the stand and testified, as follows:

DIRECT EXAMINATION

BY MR. STILL:

Q May it please the Court, the witness is James Everett Voyles. He lives at 1102 Savannah Street in the City of Mobile. He has a B.S. Degree -- and a M.A. Degree from the University of Mississippi, and a PHD Degree from North Texas State University in Denton, Texas, with the

major in political science.

He is presently employed in his own business, which is known as James Everett Voyles and Associates.

Dr. Voyles, what is your age?

A Thirty-two.

Q You also hold a part-time teaching jobs at Springhill College and the University of South Alabama?

A That was true, Mr. Still, up until May, at which time, I resigned in total from Springhill. I will teach in the fall at the graduate program at the University of South Alabama, assuming it is funded.

Q Would the clerk hand the witness Exhibit number 9, please?

Here you are. Do you have one?

A Is that my desertation, Mr. Still?

Q Yes.

A I have a copy here.

Q Fine. They are all numbered the same, Judge. Would you explain to us what Plaintiff's Exhibit number 9 is?

A It is my doctoral desertation which is entitled "An Analysis of Voting Patterns in Mobile, Alabama, 1948 through 1970".

Q And this was in partial completion of your PHD?

A Yes. That's right.

Q What was the general purpose of the study?

A The general purpose of the study was really to be a methodological statistical study of the voting patterns in the City of Mobile during the years this indicates.

Q What statistical devices or methods did you use to measure voting behavior?

A Are you referring to the Pearson product moment?

Q Yes.

A Yes. I used that as a means of determining correlation between variables in voting.

Q Is this a form of regression analysis?

A Yes, it is.

Q And is it substantially similar to the least squares method of analysis?

A Yes. As Dr. Schlichting testified, the methods that the Plaintiffs used a multiple correlation is based on least squares. This is always a derivative of least squares. The major difference, the Pearson product moment handles only one variable at a time whereas the multiple handles any number of them.

Q They come out with generally the same statistical answers given the same information?

A Yes. Theoretically, at least, if the data was handled exactly the same the results would be exactly the

MR. STILL:

In the bottom of the second paragraph, you make the statement, "The implications appeared to be that identification with the black vote was to be avoided if one was to be successful in local elections. Thus, black electoral influence was virtually deleted in Mobile,".

Now, was that a conclusion of your study?

A Yes. That is basically a conclusion.

Q All right. Wasn't the thesis or the hypothesis that you set out to prove in this desertation that black voting influences in the City of Mobile over the time period you were talking about had decreased and the Republican influence was increasing during the same time period?

A Yes.

Q All right. Did you prove that hypothesis?

A I think I proved very well the question of the black. I am not for sure I did so well on the Republican, although statistically they both proved out.

Q All right. You then again make the same type of statement about black influence in the elections, on page one hundred, I believe, in the bottom paragraph on that page, you make a statement that while blacks seem to be supporting all three winners in 1953 that everybody who won in 1969 did not carry the black wards; is that correct?

A Did not carry the black groups, yes.

Q All right. Is that a conclusion of your study?

A Yes.

Q Is that in support of your hypothesis?

A Yes, it is.

Q And I believe that you stated on page one hundred and seven of the desertation, around the middle of the page that it is better to ignore the black vote than to risk identification with it?

A Yes, I did.

Q All right. Now, what do you mean by identification with the black vote?

A Well, by 1969, Mr. Still, the issue of Civil Rights, race and so on, had become very important, an important issue in Mobile.

Perhaps it reached its peak, but certainly was a strong issue anyway and had been in the '65 race, as well, particularly in '69. What I meant by this was if a candidate got too close to the black vote and was identified as a candidate of the black community he was very likely, in 1969, to find some white backlash to his particular candidacy. This was particularly critical, if you were in a runoff election.

Q Your thesis is not that any person who receives substantial black votes is going to lose, but that that candi-

date will lose if white voters perceive that the candidate is identified with black voters; is that correct?

A Yes. That is basically what it is.

Q So, it is quite possible, under the thesis that you have developed here, for a candidate to receive a substantial number of black votes and still be successful; is that correct?

A Yes. I would have assumed, in 1969, that a candidate could have received a substantial amount of votes in the black community and still have been successful.

Q Now, would it also be congruent with your thesis that a candidate -- if a candidate was identified with the black vote, that white voters might vote against that candidate, notwithstanding how the candidate actually did in the black wards on the same day?

A I suppose that is possible, although we don't have any results of that that I know of.

Q All right. And most of the cases that you studied, didn't the allegation of -- well, the identification with the black vote or with the block vote, as it is called in advertisements, sometimes doesn't that generally take place in a runoff election?

A Yes, The tendency was and this is in the perception part of the tendency was that several candidates would run in the first race which two of them would end up in a runoff.

Since the election we are talking about requires a majority, at which time, in the case of Joe Langan, in particular, his opposition would publish in the newspapers results of various black wards showing that Mr. Langan got a disproportionately large percentage of the black votes and thus identifying him with the black vote and the strategy would be the reaction from the white community to offset the votes Mr. Langan was expected to get from the black area and the perception part came, of course, from the opposition that published this.

Q In Mr. Langan's case, didn't you find in here that in some cases the opponent would use the previous election data against Mr. Langan the first time around?

A No. I don't believe I did, Mr. Still. I don't recall that, if I did.

Q It is just generally restricted then to runoff situations?

A To my knowledge, the only advertisements of that type that appeared within the period of this desertation was in the runoff with Mr. Bailey and Mr. Langan in 1969.

Q All right. Was 1969 a runoff with Mr. Bailey and Langan, or was it just the first election?

A Yes. It was not a runoff. I assume I used the 1965 data.

Q All right. Now, about page seventy of the desertation

you began talking about some black candidates who have run for election?

A Yes, I do.

Q Which black candidates did you study?

A The 1966 race of Dr. Russell who, I believe, was a candidate for the Mobile County School Board and then, I believe, the election of Mr. -- that Mr. Montgomery and Mr. Bell contested, which was a special legislative race in 1969. You might prompt my memory. Did I do the one on the Jacobs race in the desertation?

Q I don't see it mentioned.

A I don't believe I did. Okay.

Q All right. Now, what conclusions did you draw about the chance of a black person being elected at an at large election?

A I don't know that I came to that conclusion. None of these three candidates were successful.

Q Did you run any sort of an analysis about the votes that they received in various wards?

A They received substantially more vote in the black area than they did in the white.

Q Would you look at page seventy-two, please?

You have a statement there, "In fact, the percentage of vote for Russell in each ward corresponded closely to

the percentage of negro voters in that ward."

Is that a conclusion of your thesis?

A Yes, it is.

Q Would you think that that would indicate, at that time, a racially polarized voting situation?

A I think it indicates, in that particular race, that Russell did substantially better in the black area than he did in the white.

Q All right. Does it indicate to you, considering the percentage of vote that he got in comparison to the percentage of black in each ward, that he was receiving substantially negro votes and no others?

A He was receiving substantially negro votes. I am not for sure I can come up with a cause and effect on the statistics. I was not in Mobile at the time.

Q All right. Would the Clerk hand the witness Plaintiff's Exhibit number 53, please?

Would you look at, please, the top of the first page at the results of the City Commission races and this Exhibit has been previously explained to us and I believe you were here, at the time, that the top half of the first page includes the Pearsons R, that is the product moment correlation coefficients run by you for each one of these legislative races -- excuse me, City Commission races for

groups holding race constant, as we say?

A Yes. I compared the low income white groups with the higher income white groups.

THE COURT:

There seems to be some of your notes in this Exhibit. Hand them to him, Mr. law clerk.

MR. STILL:

All right, excuse me.

Q Does this table show only the difference between low white and high white?

A Yes, I believe so.

Q All right. Is it possible to compute, from the table beginning at page one hundred and twenty, the difference between the low black and the low mid-black?

A Yes.

Q All it would be is a subtraction effort, wouldn't it?

A Yes.

MR. STILL:

Your Honor, I would like to show the witness -- we are running out of space to tack it up on the board over there. This is Plaintiff's Exhibit number 56. Take a look at that for a moment.

All right. Plaintiff's Exhibit 56 is a chart showing the differences between -- in the case of the dotted red line,

showing the differences between the low income black and the low income white who voted for the winner.

In other words, that would be the same as the first column labelled "Difference" on page one hundred and twenty, wouldn't it be, Dr. Voyles?

A Yes.

Q All right. Now, the solid red line shows the difference between lower middle income blacks and whites, the percentage voting for the winner, and I believe that would correspond with the last column on page one hundred and twenty marked difference, wouldn't it?

A Yes, sir.

Q All right. Now, the black lines are then computed from the material that you have on this table and the differences are not specifically shown, but the dotted black line shows the difference between lower income blacks and lower middle income blacks that would be comparing the column -- those respective columns and taking the difference between them and the solid black lines show the same thing for whites, which would then take the columns labelled lower white and lower middle white and take a difference between them.

Now, looking at this chart, don't we generally see that the difference between racial groups -- no, excuse me. The difference between income groups remains fairly low from

1961 on, whereas it was much higher in the fifties?

A Yes, it is.

Q Doesn't the chart also show that the difference between the racial groups was about the same as the difference between income groups in the fifties, but that it got much higher into the thirty to forty percent range in the sixties; isn't that correct?

A Yes. That is what it shows.

Q All right. Now, would you conclude from looking at this Exhibit which, of course, is based on the table in your thesis that over the time from 1953 to '69, which is a period covered by your thesis, that the income of the voter has become less important in explaining the difference in turn out than the race of the voter has?

A Actually, we are not talking about turn out. We are talking about.....

Q Excuse me, voting for the winners, I am sorry.

A Yes. We are limiting that up to and including 1969. That is true.

Q All right. Your Honor, this chart includes some data from 1973 that was also presented to us by the Defendants.

We will present this in evidence at a later time once we have gotten that material in.

MR. ARENDALL:

Q In any event, that was not done in your desertation nor has it been done in Dr. Schlichting's regression theory?

A No, and going further than that, it cannot be done at this point. It would have to be done at the time of the campaign while it was going on.

Q While your desertation indicates a very high Pearson's "R" in the Langan 1969 race, did you make a sufficient additional study to form a conclusion as to what actually cost him the election?

A Yes. I made some comments on that in the desertation.

Q Would you express those to us?

A Well, I think the obvious thing that happened to Mr. Langan in 1969 was the boycott in the black area and perhaps the impact of the hurricane Camille, but for whatever factor, the fact that blacks did not turn out in large numbers -- to give you some figures about that, in wards ten, eleven, twenty-two and twenty-three, Mr. Langan received sixteen hundred and ninety-two fewer votes than in 1965. That is fewer in 1969 than he did in 1965.

In wards three, twenty and thirty-two, Langan received three hundred and sixty-six votes fewer in 1969 than he did in 1965, yet his percentage of vote that he got from the black area was roughly the same as what he received in 1965; that is, he received most of it.

black for another type of ward.

So, there is -- that would be forty percent black or a forty-five percent gap in there?

A Yes.

Q We are not talking about smaller increments of vote, escuing the diagram in some way showing a smaller relationship or near perfect relationship on the basis of that?

A Yes. We had a pretty good gap in them.

Q Forty-five percent is a pretty good gap when we are talking about a hundred percent universe, aren't we?

A Yes.

Q Now, the thesis you were testing -- the hypothesis you were testing in this thesis was that black voting power in the City of Mobile had decreased during the period under study.

Now, you found that to be true, didn't you?

A Yes. If you are going to -- yes, okay. How are you going to define voting power in what you are saying?

Q Now, cause and effect is not shown, as you said?

A No, not by the statistical work.

Q All right. Do you have your thesis there in front of you?

A Yes, I do.

Q Look at page twenty-nine, please.

A Okay.

Q Now, toward the bottom third of the page there is a sentence.....

THE COURT:

What page?

MR. STILL:

Twenty-nine, your Honor.

THE COURT:

All right.

MR. STILL:

That reads: "Product moment correlations are mathematical models that determine the degree of association between given variables."

A Yes.

Q Now, you used the term there, "degree of association"?

A Yes.

Q Instead of cause and effect?

A Yes.

Q Now, once you have shown a degree of association between two factors and we have ruled out the obvious anomalies, or the obvious things like shoe size and reading ability, if we are really trying to test something, doesn't that degree of association shown by Pearson's R actually shows us that

the two factors are associated in some way; isn't that correct?

A Yes. It shows association. What it does not show is the reason for this association.

Q Right. And we can, once we have shown the association between childrens' shoe sizes and their reading ability, once we have shown there is that correlation, then we can look at it with our own intelligence and say, well, of course, there is cause, they are both related to age; isn't that correct?

A Surely.

Q When we are dealing with elections, I believe you said you were replicating a study that had been made in Atlanta trying to determine the impact of race and income on voting within the City of Atlanta and, in this case, you did it for the City of Mobile and there are other studies for other areas, aren't there?

A Yes, there are.

Q After we have this statistical measure called Pearson's R we can then look at it with our- own human intelligence to determine whether or not it means anything; isn't that correct?

A Yes.

Q And in writing your thesis you looked at the Pearson's R that you got and you determined that black voting

power had decreased during the period under study, didn't you?

A Yes, I did.

MR. STILL:

All right. That's all the questions that I have.

MR. ARENDALL:

Judge, I overlooked asking one brief question.

THE COURT:

All right.

RECROSS EXAMINATION

BY MR. ARENDALL:

Q If you would, please, turn, Dr. Voyles, to page one hundred of your desertation right up at the top. You are referring there to the Langan election in 1969 and you have a cause that says; "He did not carry a majority in any ward (or group) that was predominantly white.".

Now, should not the words "Any ward" and then the or before the group be deleted and should not the clause correctly say, "He did not carry a majority of any group that was predominantly white"?

A Yes. That is correct. I am surprised they didn't catch that.

Q In the election in which Mr. Langan was defeated,

THE COURT:

When we use voting power, we have to use in conte t with different things, don't we?

A Yes.

THE COURT:

That is one of the problems we run into with statistics. Go ahead.

MR. STILL:

That's all the questions I have, your Honor.

THE COURT:

All right. Who is your next witness.

MR. STILL:

We call Dr. Charles Cotrell.

CHARLES COTRELL

the witness, called on behalf of the Plaintiffs and after having first been duly sworn to tell the truth, the whole truth, and nothing but the truth, took the stand and testified as follows:

DIRECT EXAMINATION

BY MR. STILL:

Q May it please the Court, this is Dr. Charles L. Cotrell. He lives at 210 King William Street, San Antonio,

the present case, but we will take them up at the time we get to them.

Now, Dr. Cotrell, what background work have you done here in the City of Mobile to prepare yourself for the testimony in this case?

A I examined Dr. Voyles's thesis. I examined the work done by the two statisticians hired by the Plaintiffs. I undertook fairly extensive interviews with politically active persons in Mobile City politics and Mobile County and schoolboard politics.

I read newspaper articles on Mobile politics and visited Mobile, for these purposes, personally three times for period roughly of ten or twelve days.

Q Now, what does the term "voting dilution" mean to you as a political scientist?

A Voting dilution means the cancelling or submergeance of a voting group, an identifiable group of voters. It is usually used in association with at large elections. That is the context within which I have used the term and have seen it used. It suggests that a number of factors have come to play, some historical and some current have converged to bring about an effect which basically, as it were, freezes permanently or makes it significantly difficult for a particular group to express their preferences.

It is associated with a very important dynamic, that is of racial polarized voting, in a context where race has shown to be manifest in elections or in a -- in a context wherein race can become manifest in the elections.

In the particular electoral structure of at large elections in the context of the dynamics of racially polarized voting, racial dilution occurs when, for example, one racial group of a minority numerically or possibly have a majority numerically, but still, in a voting minority faces, in the sense, we could say the hostility of a white majority or a black majority, but faces hostility of a voting majority which basically controls the entire electoral -- election and so on.

So, the dilution occurs when the preference of the minority numerical or the minority occurs when the preferences are no longer registered in the system. In other words, the votes could be cast time and time again, but to no avail.

Now, there are other factors which have been found in behavior in law, but that is the basic dilution notion.

Q All right. Now, what data from Mobile did you examine to decide whether or not voting dilution of black voting strength exists in Mobile City?

A I examined correlations that were presented to this

Court. I interviewed some eighteen to twenty individuals. I heard testimony in this Court for the past two days. I examined what can be called racial campaign appeals and I also examined, as I suggested to you, Dr. Voyles's thesis which has been introduced as evidence into this Court.

Q From this evidence, what is your opinion what is your opinion about whether or not voting dilution of black voting power exists in Mobile?

MR. ARENDALL:

Just a minute. Objection to that. I do not consider that he has stated the facts on which an opinion can be based.

THE COURT:

Well, he is giving a political science view of what dilution is. That is not necessarily the Court's definition of what dilution is, but to develop his thesis or his point, I will let him testify.

MR. STILL:

Have you reached a conclusion?

A Yes, I have.

It is my opinion that black voting strength in Mobile has been diluted and the black voting strength is thereby basically cancelled or negated in the at large structure in the Mobile City elections.

Dr. Schlichting's testimony; is that correct?

A Since approximately one-fifteen on Monday.

Q All right. James Buskey and some other witnesses that we have had have suggested that lower black voter turn out in elections is a residual effect on past discrimination.

Do you feel that you have sufficient evidence to draw that same conclusion here for the City of Mobile?

A I would like to look at more data before I would reach the conclusion that it is simply the residual effect that causes low black participation or low voter turn out. We do, however, have some evidence and I would, among the explanations, lean toward a residual -- the residual impact of exclusionary laws in the past.

We have evidence which shows up to 1965 that there was a fairly massive differential in voter registration and this doesn't necessarily mean turn out, but it is an indicatory.

Secondly, I believe Plaintiffs have introduced some contrast between predominantly white and predominantly black wards and turn out in the sevencies.

The interviewees all estimate that the turn out is lower. So, I think we have some basis to reach a tentative conclusion that there is a differential between black and

white turn out.

As to the residual question, it seems to me that political science offers us, I should say, three possible explanations. One of them would be that black voter turn out would be the result of past electoral structures. Ira Sharshansky (sic) in his book on regionalism in America, Kenneth Vines -- I am sorry, Jacobs and Vines and their book on American State Politics, suggest that electoral structures do, indeed, have a real impact upon participation rates and if a group of citizens have been excluded historically, I think we can reasonably expect that legacy of exclusion to hang on, as it were, as a residual effect in terms of their voter turn out. That is one explanation and that is the explanation to which I lean.

Q What are the other explanations?

A A second explanation would simply be that black voters in Mobile, as blacks are apathetic, something indigenous in the group. I don't believe I would honor this as a political science explanation. It gets into the national character studies that have been fairly discredited and yet a third explanation would suggest that it is in the anals of voting behavior literature a third explanation would suggest that lower income people turn out less and that

there is an overlap between black voters and lower income people.

Of course, we had testimony yesterday which showed that in spite of the economic levels, as it were represented in Dr. Voyles's thesis, the differential between white and black voters and turn out in the sixties maintained. Thus I would return to my original point, the residual explanation seems to have credence.

Q All right. Let's go back over a couple of these points for a moment. As regards the second point, you said it might be something indigenous in the black character and then you said that deals with the national character studies which have been pretty well discredited?

A Well, let me elaborate on that. I don't want to make this a vowel, but it could be a possible explanation, as I see it. During the thirties and forties a number of studies were contrived concerning the authoritorian or regimenting might of the German people, tracing it back to some pressinn regimentation in the nineteenth century. To impute to a group, a racial group to an ethnic group or to impute to a national group characteristics such as in the area of the country that I am from, Mexican-Americans are simply lazy, is dangerous stereo-typing and I don't see any evidence which suggests that there is anything indigenous

in black voters in Mobile as a group that they would suggest that they don't turn out.

Q All right. Now, have you examined any evidence or conducted any interviews about the difference between voter turn out and multi-member elections or at large elections and single member district elections which we have here for the legislature?

A Well, I have, in the context of San Antonio, one piece of evidence we have here appears to be the high degree of black voter turn out in the single member district, House district ninety-nine; that is John LeFlore's old seat, wherein, I believe, six candidates offered themselves for office and there seemed to be a response among black voters to that number of candidates and to the possibility of electing a black to -- or a person from that district to the legislature.

I have also compared, I would say this very briefly, I have also compared the effects of the same phenomenon in the Bear County, Texas, the original authority in the White decision.

MR. ARENDALL:

Just a minute.

THE COURT:

We are not going into what you found out there. You

may use the basis of any studies you made in drawing conclusions and facts you have found in this one. I would suggest you do not interject those other cases into it.

MR. STILL:

You have heard testimony in this Courtroom from several persons saying that black people generally have not run for at large elections, because they felt that they did not have sufficient voting power to win them and I believe Mr. Buskey testified that he would not run in an at large election, because he could not win such an election.

Have you been able to gather any sort or make any sort of conclusion on the basis of the testimony that you have heard here, the interviews that you had on the other evidence that you looked at as to the participation as candidates by blacks in an at large election system versus a single member district system?

A The political science language for this would be the recruitment of candidates and based on the testimony I have heard, and based on the interview sources, I would have to conclude that black voters -- black candidates would basically -- potential candidates would be discouraged from running in at large situations and the view expressed to me and in this Courtroom is that there is a high probability that we won't win or it is impossible or, as one person

said, suicide, in the at large structure and the way in which this would be talked about would be a certain discouragement in the incentive to offer one's self or through association gather about political followers and hence run for office. So, my opinion would be that a discouragement factor is at work.

Q All right. You have heard the question that his Honor asked the previous witness this morning about the voting power of blacks between the time that they are thirty percent or so of the electorate, and the time that they are fifty percent of the electorate.

Do you agree with the conclusion that Dr. Voyles reached that as long as racial polarization occurs that blacks will not be able to win at large elections?

A Yes, I do. I would like to comment on that, if I might.

Q Go ahead.

A Judge Pittman formulated the hypothesis, the hypothetical in a way in which we can ill afford to ignore. He suggested that in the hypothesis that as black voters in this thirty-five percent population figure gained strength in Mobile there is a tendency or potential to react among -- apparently to react to that, as it were, as a threat. So, he concluded the logical conclusion would be that until

blacks were in the majority in the at large structure you really couldn't expect their preferences to be registered equitably.

I think that goes to a very realistic view of this particular rank or percentage rank of black population in Mobile and I would add one thing to it. It is quite possible that that could be expressed, that resistance, as it were, to black, increased black voter registration, could be expressed in a manifest way or it could in public opinion terms remain latent, as it were. We wouldn't know about the existence or possibly existence of racial campaigning and appeals to it until a black candidate basically a qualified candidate offers himself for office and, in this context, I think we would be back to our probability of failure of success in the at large context. It is a very crucial way, it seems to me, to understand dilution in the Mobile context.

Q All right. Now, that deals with black candidates running for election.

What about the situation where it is not a black candidate running for office, but it is a white candidate supported by the blacks. Can the blacks occupy a pivotal position thereby enhancing their voting power in the present system?

A Well, Dr. Voyles's thesis and this testimony suggests that the black identification -- identification with black voters, as he calls it, is a kiss of death. I think dilution works whether or not there would be a black candidate or a white candidate openly and closely associated with the black interests. We had a very esteemed citizen of Mobile yesterday in the Courtroom, Mr. Joe Langan, and I think his case and his election in 1969 speaks to that point.

Indeed, in terms of the pivotal vote notion or voting power, as Judge Pittman framed it.....

THE COURT:

I was using a term that the witness used. I was trying to clarify what he meant by voting power.

A Well, let's stay with counsel's use of voting power or the witness's use, as a term. What this means is a white candidate would have to approach the black community, as it were, looking over his or her shoulder and hoping not to evoke any kind of intents or close identity or racial identity that would, in turn, cause what we would loosely call a back lash among white voters. That formulation, it seems to me in both the terms of discrediting the pivotal vote notion and also in terms of this increasing voter registration related to racial polarization is a very

inciteful way to look at this, the Mobile situation.

THE COURT:

Now, I am not exactly sure just what you said. Do I understand you to say that it is dangerous to look at the increase of black voting power as minimizing their effect, just because it increases backlash or are you saying something else?

A No. We had two parts of it, your Honor, two parts of the analysis, and what I am suggesting is that sort of a vicious Catch-22, as you might hypothesize on, could occur if racial polarization would indeed increase as blacks become a voting threat.

THE COURT:

If I understood you correctly, you are saying that racial polarization may increase, but it does not necessarily decrease their power, because they have some power on the necessity of other people to seek their votes?

A No. That is the second point I was addressing. I suggest their power is debilitated in the sense we use power.

THE COURT:

I understand.

A Because of the racial context within which they must

be approached as a voting group.

THE COURT:

What was the danger? I understood you to say that there was some danger in viewing that.

A Here is the danger, your Honor. It seems to me, as far as equitable or equal black voting strength, we have seen introduced into evidence here the newspapers and other ads that show black wards with "x's" through them and to be saddled with that black vote, to openly court the black vote and black interest, could indeed be very problematic for a candidate. He must approach them looking over his shoulder to see how that reaction is received by the white voters and that is the very mechanism of racially polarized voting or the potential of racially polarized voting that causes the problem in dilution.

Q In other words, you agree with Dr. Voyles's statement that it is a kiss of death to be associated with the black vote?

A Yes, I do.

Q For a white politician?

A Yes, I do.

Q Now, all of this hypothesis has been based on the idea that there is and will continue to be racial polarization.

Now, have you found, from the evidence presented in

this case, particularly the computer analyses, the regression analyses, that there is a racial polarization of voters within the City of Mobile?

A Yes. I have found that to be the case.

Q Do you find that it is diminishing, at the present time, or increasing or staying about the same?

A I wouldn't respond to the question in terms of more or less or whatever. I would suggest to you that racially polarized voting exists, that it may be difficult to determine fully that that exists in the '73 elections, although you do have some correlations. The interviews suggested that neither of the candidates in the Greenough -Bailey race were particularly favored by a great numbers of black voters, that is, identified with black voters. This was the interview source and I guess more importantly the notion of race still seems to be here and it seems that quite possibly it could be evoked as an open issue, unfortunately, in 1976 as it was in 1969 in terms of the racial campaign ads. Indeed, testimony suggest that it was evoked in 1974. So, racial polarization still persists in the seventies, in my opinion.

MR. STILL:

Thank you. That's all the questions I have.

MR. ARENDALL:

Your Honor, give me about five minutes to look over

MR. ARENDALL:

Q Dr. Cotrell, did I understand you to say awhile ago that you purported to find some racial polarization in 1973 election for the City Commission?

A I would have to see the correlations on the Greenough - Bailey race, but I believe the correlations -- I am not sure whether it was statistically significant or not.

Q Well, I thought you based your opinion on having seen the correlations. I want to call your attention to the fact that it was thirty-five -- the R square was thirty-five and that is well under the trash range,isn't it?

A Well, I also suggested to you to verify that the interview sources suggested that Greenough and Bailey, unlike a person like Langan, were not overly identified in the black community as representing black interests.

Q Do I understand you to say that black candidates or some white candidates have shunned the black vote?

A No. I said white candidates in the context of racially polarized voting would probably have to approach a voter group like a black voting group in Mobile very cautiously and their approach and their strategies would have to avoid what Dr. Voyles had described as the kiss of death.

Q And can you give me any candidate for City Commission

in recent years that have shunned the black vote?

A I wouldn't be qualified to suggest that this candidate or that candidate in the closeness of a campaign headquarters developed the strategy or that. I am simply suggesting that that is an explanation of the way campaigns are waged, recognizing that the black voters might make as much as twenty-five or thirty percent of the electorate.

MR. ARENDALL:

No further questions.

THE COURT:

You may examine him.

REDIRECT EXAMINATION

BY MR. STILL:

Q Dr. Cotrell, I have a couple of questions, please.

Would the Clerk hand Plaintiff's Exhibit number 4 to the witness, please.

THE COURT:

Before you do that, let's take about a fifteen minute break.

(RECESS)

THE COURT:

All right. Mr. Still,

MR. STILL:

MR. MENEFEE:

Mr. Sylvester Williams.

SYLVESTER WILLIAMS

the witness, called on behalf of the Plaintiffs, and after having first been duly sworn to tell the truth, the whole truth, and nothing but the truth, took the stand and testified as follows:

DIRECT EXAMINATION

BY MR. MENEFEE:

Q This is Mr. Sylvester Williams, forty-eight years old and lives at 350 Adams Street, Mobile. He was born in Dallas County and lived in Mobile County since 1940. Finished the third grade. He is on a labor committee and a civil rights committee for the non-partisan voters league.

He is treasurer of the shipbuilders union and works at Alabama Dry Dock and Shipbuilding Company.

Is that correct, Mr. Williams?

A That's right.

Q Mr. Williams, how long have you been associated with the non-partisan voters league?

A Since 1960, around 1960.

Q And when were you registered to vote in Mobile?

A In the late sixties.

Q Prior to that time, had you attempted to register to vote?

A Yes, I did.

Q About how many times?

A About six or seven times.

MR. ARENDALL:

I object, if your Honor please. I think we have gone into past discrimination.

THE COURT:

Well, I have told them that since 1950 that there was a stipulation up until 1950, but I have told them that since that time -- that is as far as the stipulation went. Go ahead.

MR. MENEFEE:

I am sorry. About how many times did you try to register?

A About six or seven times.

Q Would you describe some of those efforts? Did you go down with other people?

A Well, we went down with other peoples, Moss Johnson and several others, but we couldn't make it.

Q Were you allowed to take the test?

A Well, we tried to take the test, but we never could pass.

Q What sort of questions were they asking you; do you remember?

A Well, it has been a pretty good while ago and it is hard to remember.

THE COURT:

Was this prior to the voting rights act of 1964 or '65?

A Yes, sir.

THE COURT:

I will take judicial knowledge that the board of registrars presented me with a list of questions prepared and I couldn't answer some of them. They called me and asked me what were they to do with them -- not what they could do with them, but did I know the answers and to some of them I didn't.

MR. MENEFEE:

This Mr. Moss Johnson you mentioned, was he active in the area in trying to encourage blacks to register to vote?

A Yes, he was.

Q How did he go about his operation?

A Well, he would -- he was working at the yard there

and he would ask them. you know, to take them down to get them registered or to vote.

Q Would he take a bunch of his co-workers?

A Yes, sir.

Q Was he very successful in this effort?

A Well, he was taken down there, but he wasn't successful.

Q He kept trying?

A Yes, sir.

Q What was .....

MR. ARENDALL:

What time frame?

THE COURT:

Yes, give us the time.

MR. MENEFEE:

Could you give me some estimate on this time?

THE COURT:

Within a period of time -- did the six times occur between what years?

A I believe this was in the fifties, I believe.

MR. MENEFEE:

Did they extend into the sixties? Did you attempt to register in the early sixties?

A We tried it in 1960, but we wasn't successful until

after the voting rights act passed.

Q Okay.

THE COURT:

When was the first time and when was the last time?

A I believe it was the early sixties, I believe, the last time.

THE COURT:

And the first time?

A As close as I can get to it, I believe somewhere in the late fifties.

THE COURT:

All right.

MR. MENEFEE:

Q Since you have been registered to vote, have you regularly voted?

A Yes, sir. Since I have become a qualified voter I have missed one time voting.

Q When was that?

A This past .....

THE COURT:

I don't think that is necessary.

A This past May.

THE COURT:

Let's get on to more meaningful things.

Do you remember demonstrations in front of City Hall one time in which Mr. Langan, I believe, came out?

A Yes. Mr. Langan.

Q What action did Mr. Langan take, at that time?

A Mr. Langan come out there and asked them what did they want and broke it up and told them whatever they wanted or whatever problems they had to come down to City Hall and see them and he would get together with them and work their problem out.

THE COURT:

Again, I express reluctance about cutting off a line of questioning, but I think this area is fairly well established and nobody really disputes what happened. If it comes up, I will let you offer it later.

Just in the interest of moving this case along in the areas where there seems to be no great dispute, let's don't whip it to death.

MR. MENEFEE:

Over the years, the non-partisan voters league has endorsed a fair number of candidates; is that correct?

A That is correct.

Q How do you go about this process candidates come in and are interviewed? Do you endorse a candidate in every race?

A Well, most of it.

Q How do you make a decision? Suppose you have two candidates of which are very attractive, very good?

A Well, we have what they call a screening committee, and the screening committee talks to them and the screening committee will make a recommendation back to the membership and what candidate they choose they are what they call picking the lesser evil.

Q Are you often faced with this situation of picking the lesser of the evils?

A That's right, pick the lesser evil.

Q Do you think all of the candidates endorsed by the non-partisan voters league that have been elected have treated blacks fairly?

A No.

Q Why do you think they may not have treated you fairly?

A Well, in one way, seeing that the County hasn't.

Q Why do you think they don't treat you fairly?

A While the County come in the black community and promise they are going to do this for them and they give the blacks red dirt and oyster shells on the roads.

Q Let's see, you were a close associate of Mr. John LeFlore, I believe?

A Yes, sir.

Q Do you know if Mr. LeFlore had, over the years in behalf

of the non-partisan voters league, written police commissoner Doyle about problems many times?

A Well, he had written to Mr. Doyle numerous of times.

Q What was the feeling of you and John LeFlore and members of the non-partisan voters league about the response?

MR. ARENDALL:

If your Honor please, he is being asked to testify to mental attitudes of a dead man and others and I object to the question.

THE COURT:

No. What the black community, what their feeling about it is, and he is familiar with it and his own and I will let him testify to it.

A Well, Mr. LeFlore, he wrote to Mr. Doyle several times and.....

THE COURT:

They didn't ask for details. The question was, what was the feeling?

A We felt like Mr. Doyle didn't give, not only to Mr. LeFlore, but to the black community, what this -- he didn't give the black community good representation.

Q Do you remember reading or hearing of statements of Mr. Doyle being tired of John LeFlore?

A Yes, sir. I believe he said that on T.V. and also

LeFlore was -- I don't know whether he talked to Mr. Doyle on this particular incident, but I believe he was trying to get in touch with Mr. Doyle on this killing incident, this Cecil McMillan case.

Q Mr. LeFlore had a good bit of difficulty in getting in touch with Mr. Doyle?

A I would say he did.

Q Mr. Mims is in charge of public works and oversees the garbage workers, I believe?

A Right.

Q Was the non-partisan voters league or you involved in this garbage strike? Did you follow that fairly closely?

A Well, some, we did.

Q And did you think that Mr. Mims was easy to get in touch with and deal with on this matter?

A Well, some of the people that worked for the City say he wasn't.

Q Mr. Mims come into the black community very much?

A Well, he come in there, like most politicians, when election time comes.

Q Do you see much of him otherwise?

A No.

Q Do you think the City Commission generally treats blacks fairly?

A No.

MR. ARENDALL:

No further questions.

MR. MENEFEE:

That's all, your Honor.

THE COURT:

You may come down.

Whom will you have next?

MR. MENEFEE:

Leonard Wyatt.

LEONARD WYATT

the witness, called on behalf of the Plaintiffs, and after having first been duly sworn to tell the truth, the whole truth, and nothing but the truth, took the stand and testified as follows:

DIRECT EXAMINATION

BY MR. MENEFEE:

Q This is Mr. Leonard Wyatt, forty-three years old, lives at 473 West Creek Circle in Mobile. He is married and has three children. Attended Springhill College for three years. He was born in Mobile County and has lived here for the past twenty years. He is in the real estate business,

a member of the Chamber of Commerce and board of directors of the Salvation Army.

Is that a correct statement, Mr. Wyatt?

A That is correct.

Q Mr. Wyatt, would you tell the Court what your political experience amounts to? Were you a candidate this passed House ninety-nine election?

A Yes, sir.

Q Have you been active in other political campaigns?

A Not as a candidate, but in support of candidates.

Q In recent years, who were they?

A I have not solicited. I have actively supported people that ran for public office in terms of being in favor of their candidacy.

Q I see. You have not worked, actively worked, then, in any other campaigns?

A No, sir.

Q Mr. Wyatt, why did you decide to run for vacant House ninety-nine seat?

A I felt, first of all, the need to render some type of service to the community. I felt iminently qualified to hold that position and that is basically it.

Q Give me a ballpark figure of how much money your campaign cost you.

A Approximately four thousand five hundred dollars.

Q Were you able to go around the community and shake a lot of hands and pass out literature?

A Yes, sir.

Q Did you make the runoff?

A No, sir.

Q Why had you not sought political office prior to this, Mr. Wyatt?

A I never envisioned the possibility of winning before.

Q Did House ninety-nine present an attractive possibility for winning?

A It prompted the possibility for winning, based on the fact it was confined to a district in which I lived and in which I could move freely and meet most of the people who would be voting.

Q Mr. Wyatt, would you consider running for the Mobile City Commission in the present at large elections?

A I doubt it.

Q Why is that?

A First of all, I would have to be realistic in terms of the cost factor, the probability of raising enough money to support that kind of campaign.

The money would not probably be forthcoming and the other thing would be that generally these elections seem to

get wound up, some how, along racial lines and I would have to look at the numbers and kind of be overwhelmed by that.

Q Okay, sir. Mr. Wyatt, do you have within the black community -- there are a number of organizations that endorse candidates such as the non-partisan voters league and the voters registration organization that are two of them. Can you give us your opinion on the influenceof the non-partisan voters league endorsement within the black community?

A Of the non-partisan voters league?

Q Yes.

A I think they probably affect approximately twenty percent of the black community. I don't think they are as effective as they have been. I think their impact on elections is diminishing somewhat, but they do have some effect.

Q And how about -- how are the other endorsing organizations such as voters registration organization, are they very effective?

A I have no idea. I only heard of the VRO when I was a candidate and happened to be interviewed by them.

Q Mr. Wyatt, what sort of -- during your campaign, what sort of complaints and problems did the voters bring up with you? Did you hear many issues raised, community problems?

toward ten in terms of going out in the community or they were at the other extreme on being down, being very vocal against the people in that community, so that generally speaking people would have voted whether they had endorsements or not and those votes would have been lopsided.

Q All right. You are telling us then that you think the lopsided vote in ward ten was the product of the individual choice of voters?

A I am saying that the attitude of candidates when you talk about ward ten and that point in time I am saying the attitude of candidates toward candidates in the black community dictated, for the most part, how those people voted.

Q Now, Mr. Wyatt, you have spent many hours in City Hall, haven't you?

A Spent a few.

Q You are in the real estate business, aren't you?

A Yes, sir. That is correct.

Q You have been down there on many zoning matters, haven't you?

A A few.

Q You have spent many hours with Mr. Mims and you have met with the other -- all three Commissioners, haven't you?

A All three Commissioners.

Q Never had any difficulty getting access to them, bearing in mind, of course, the fact that they have a few other things to do.

You have ready access to the City officials, don't you?

A Yes.

MR. ARENDALL:

No further questions.

REDIRECT EXAMINATION

BY MR. MENEFEE:

Q Mr. Wyatt, Mr. Flannagan received the endorsement of the non-partisan voters league. Did it appear that he spent a good bit of money and waged an active campaign? Did he run a hard race?

A He ran a race and spent a good deal of money, based on what he produced. I have no way of knowing that for sure.

Q Does the fact that he ran so poorly against Mr. Buskey indicate anything about the strength of the non-partisan voters league endorsement?

A I would think that there are more independent thinkers within the black community today than say in the past, which would have diminished their effectiveness.

Q Mr. Wyatt, being in the real estate business, I suppose you have been around the City a good bit.

Do you have an opinion as to whether or not black neighborhoods that you have worked in receive less equal treatment in regard to municipal services than white neighborhoods?

A I would think that black neighborhoods have received less equal treatment than whites in terms of parks, playgrounds, recreational buildings and so forth.

Q Mr. Wyatt, the access that you have had at City Hall, was that in regard to real estate matters or in regard to political matters?

A Basically, in regard to real estate matters.

MR. MENEFEE:

No further questions.

RECROSS EXAMINATION

BY MR. ARENDALL:

Q Have you ever sought access to the City Commissioners on political matters?

A I may have. I don't recall a specific thing.

Q In any event, you can talk to them and nobody says that we can only talk about real estate matters; is that right?

A That is correct.

Q If you want to go down there and discuss the presidential election or the local elections or a political problem you are satisfied you can speak to Mr. Mims and Mr. Doyle or Mr. Greenough, aren't you?

A Sure.

Q Now, you haven't really made any study to determine whether or not there is a reasonable basis for the location of the various parks, playgrounds and recreational buildings in Mobile?

A No. I don't have to. Making a study would not be a thing I would normally do. Observation tells me a lot of things. Observation tells me, for example, that the park at Sage and Dauphin, for example, is an excellent place.

Observation tells me that the park where Hank Aaron grew up and played as a boy at Hamilton and is willfully neglected. It tells me the park in Plateau, which was, in fact, given to the City by a member of the community is just now in the process of having something done. I don't have to make a study to determine what is being done for one community as to another.

Q You mentioned Sage, Dauphin and the park at -- the Kidd Park in Plateau?

A Yes, sir.

Q Mr. Smith, have you ever been to any meeting at the City Hall?

A No, sir.

Q Have you ever talked to any of the current City Commissioners?

A Yes, I have.

Q Which one?

A I talked with Mr. Mims and I talked with Mr. Doyle.

Q Is that down in their offices or where?

A In their office.

Q As a matter of fact, you saw Mr. Mims about some repairs to Bellsaw Avenue and it was patched after that, although it wasn't re-paved, at that time; isn't that right?

A He directed me to the working committee or whatever they call it.

Q So, you were able to see him when you wanted to see him?

A Yes, I was.

Q And the street got patched, didn't it?

A That's right.

Q And you have talked with Mr. Doyle about police matters on occasion, haven't you?

A Well, involved with myself.

THE COURT:

took the stand and testified as follows:

DIRECT EXAMINATION

BY MR. BLACKSHER:

Q State your name and address, please.

A Dan Alexander, 3667 Claridge Road, North.

Q And your present employment?

A I am an attorney.

Q And you are also presently a member of the board of school commissioners of Mobile County?

A That's right.

Q How long have you lived in Mobile County, Mr. Alexander?

A All of my life.

Q Would you describe briefly to the Court your involvement in politics in Mobile County?

A I have been involved in politics for some time. I ran for office the first time in 1966 for the Democratic executive committee of Mobile County.

I ran for delegate to the Democratic convention in 1968.

I ran for the state legislature in 1970. I also in 1970 ran for re-election to the county executive committee in the State Democratic executive committee.

A In my particular campaigning?

Q Yes.

A Only in '74.

Q And that was when you ran against Mrs. Gill?

A That's right. Along with four others.

Q And in your opinion does the presence of a black candidate in the race in and of itself inject the racial issue into the campaign?

A Well, you know, to the point that a black in the race would normally be expected to get the majority of the black vote.

Q To the extent of what, sir?

A That you would normally expect the black candidate to get the majority of the black votes.

Q And the white candidate would not normally expect to get much of the black vote, is that it?

A That's correct.

Q What about what opposition to the black candidate? Would the converse be true in terms of the majority of the white vote going to the white candidate?

A I think that you can say that a white would be expected to get a majority of the white vote, yes.

Q Would the Clerk show Mr. Alexander Exhibit 92.

The Clerk is going to show you, Mr. Alexander, a

copy of the school board minutes which contain a statement by you concerning this most recent election where you were opposed by Mrs. Gill.

BY THE COURT:

Do you want this on the record?

MR. BLACKSHER:

No, sir.

THE COURT:

Let's go off the record.

(OFF RECORD DISCUSSION)

THE COURT:

Back on the record.

MR. BLACKSHER:

Q On page twenty-three of the minutes you say these aren't the verbatim minutes of the meeting?

A That's right.

Q Regular meeting of the board of school commissioners, Mobile County. Held in the board room of the Barton Acamdemy Building on Wednesday, October 8th, 1975 at ten, A.M.

On page twenty-three, Mr. Alexander made the following comments. He thought it was hard to argue with the logic of having single member districts. That it was hard to argue with the logic of all the board members representing the same people County wide as opposed to each of the board

members representing a smaller area. That obviously Kane Kennedy offered the bill because of the desire to have black representation on the board. The political realism was that a black presently would not win a county wide race in this county.

You were on public record as taking that position?

A If I might explain, Mr. Blacksher, the minutes of the school board, the verbatim minutes, or the verbatim tape of the school board is our official record.

THE COURT:

Is that essentially what you said, Mr. Alexander?

A Yes, that is not a verbatim statement.

Q But that is substantially it?

A That is substantially it.

THE COURT:

That is the views you expressed?

A Yes.

Q You still agree with those views?

A Yes.

Q Would you express a similar view with respect to black persons running in the City wide elections?

A That they can't be elected City wide?

Q Yes.

A Of course, the proportion of blacks and whites was

considerably different in the City than it is in the County.

Q How different is it?

A I am not real sure.

THE COURT:

Assuming there is a thirty percent black voter representation as opposed to a seventy percent white representation in the City, what would be your opinion?

THE WITNESS:

It would be my opinion that the blacks would have difficulty winning in the City wide elections.

Q And you have expressed the view that there is a need for a single member districts in the context of Mobile school board, is that correct?

A I don't know whether I said there is a need, but I said I was not opposed to that view point.

Q All right. Mr. Alexander, are you aware of the legislation that was passed in 1964 that set up a mayor council form of government that could be adopted by the City of Mobile and was put to the voters in 1973?

A I am vaguely aware of it. I am not sure of those dates.

Q Were you active in Mobile politics in 1964?

A To a very limited extent. I had one congressional race.

A To the best of my ability, yes.

Q What percentage of the school children in public schools of Mobile County are black?

A I suspect forty-five percent at this time.

Q Do you consider that there are in the normal voter's mind different considerations applicable to the question of for whom they shall vote in school board elections from those involved in that determination as to the person for whom they will vote in the City Commission elections?

A I would think so. There is a lot more interest in a City Commission race than in a school board race.

Q Normally, aren't the school board races fought out on claims of who is and who isn't very interested in school children and desirable of giving them good education and things of that sort?

A Yes.

Q And in City Commission races hasn't it been the practice over the years for various candidates to try to tout themselves as good, experienced businessmen, successful in the management of enterprises and things of that sort?

A Along with considerable other claims.

MR. ARENDALL:

No further questions.

DIRECT EXAMINATION

BY MR. MENEFEE:

Q This is Mr. John Randolph. He is sixty-one years old. He lives at 377 Bay Bridge Road in Magazine, Plateau area. He is married and has three children. He attended high school and received a diploma in air conditioning and refrigeration. Mr. Randolph has lived in Mobile County for fifty-seven years. He is the owner of Randolph Variety Store. He is a trustee for the First Hopefield Baptist Church. He is a third degree mason.

A That's right.

THE COURT:

Is your residence in Mobile?

A Yes, sir.

MR. MENEFEE:

Q Mr. Randolph, at the present time do you have a neighborhood civic club or organization?

A Yes, we do.

Q What is the name of your organization?

A It's the Plateau Progressive Civic League.

Q How long has that been in operation?

A Approximately two years.

Q I see. Prior to that, were there other organizations in the neighborhood that worked with civic problems?

of seven hundred feet or are there some instances where it is greater distances?

THE WITNESS:

Some instances is greater distances.

THE COURT:

Seven hundred feet is the smallest distance? I am trying to get a range of distances on the street that do not have fire hydrants available to them.

THE WITNESS:

I would say it averages around seven hundred feet.

THE COURT:

All right. Proceed.

MR. MENEFEE:

Q Mr. Randolph, I believe one time you mentioned some instances to me of drainage problems being so bad that it was washing bodies out of a neighborhood cemetary there, do you remember that?

A Yes, it has gotten that bad.

Q Before you go on, would you tell me when this was occurring; if this was in the last couple of years that you had this type of problem?

THE COURT:

How long ago did that occur?

THE WITNESS:

Oh, I would say within the last three years, I would say that. Between the last three years. The water that comes from the Plateau area crosses Bay Bridge and it crosses the Bay Bridge cutoff. It passes along the line of the Plateau Cemetary and that is the area that we have been able -- we have tried to get cleared up when it crosses Tenth Street. That is where it is cut off and it backs up there and causes quite a bit of damage to people who live along that area in that particular spot.

MR. MENEFEE:

Q Mr. Randolph, I believe you also told me that one of the major concerns of the neighborhood has been the park and recreation facilities. Would you describe the history behind that problem?

A Well, we were interested in a park, and of course, there was a portion of land donated to the City of Mobile for parks. And it has approximately two acres, I imagine, two and-a-half acres. We felt that that was inadequate to serve the community. And we consulted the City Commission on this and we was told to try to find a more suitable site.

Of course, we proceeded to try to do the same. So, at that particular time we were told that there was approximately a hundred and twenty-five thousand dollars available to purchase a suitable site. And of course while we

was looking for a suitable site, then we was told that the hundred and twenty-five thousand dollars had gotten lost in bureaucracy or something. I don't recall whether they used that term or not, but it got lost. So we had to stop there.

We had hoped to have some type of recreation that would give us a year around recreational facility out there instead of just summer activities and everything is closed down.

In this particular ward out there, ninety-nine four, there is approximately ten thousand or more residents in that area. And certainly a space of one or two or three acres in our judgement cannot accomadate that many children or older people, too, for that matter. That won't give them the recreational facilities that we require.

Q How long has the neighborhood been seeking these recreational facilities from the time that you are talking about?

A We are talking about a period of seven years.

Q Has the neighborhood been active in making requests to City government to help them with all of these problems that you have talked about, the drainage, the streets, the hydrants, has this been a continuing matter over the years?

A Yes. I am sure the records will show that they have been consulted. As it relates to these previous --

Q Has there been previous meetings with the City government and the Commissioners during this period of time?

A Well, I would say there has been a number of meetings down there trying to get some of these things corrected.

Q Now, do you think that they have treated you fairly over the years, Mr. Randolph?

A No, I don't think so.

Q What did you get out of these meetings with the City government?

A Well, as the saying goes a lot of promises at election time and that is just about it.

MR. MENEFEE:

That is all your Honor.

THE COURT:

You may cross him.

CROSS EXAMINATION

BY MR. ARENDALL:

Q Mr. Randolph, did you live in the Plateau area in 1968?

A Yes, sir, I did.

Q Did I understand you to say that in the course of your interrogation by Mr. Menefee that the streets were all paved out in that area?

You told that gentleman that, didn't you?

A That's right.

Q Do you happen to know whether the following streets were not paved as of August 13th 1968; Greens Alley, Woods Lane, Adams Lane, Jones Lane, Edwards Avenue, Brian Street, Semmerland Lane, Josie Lane, Wallie Lane, the east end of Edwards Street, the east end of Summer Street, the east end of Bay Bridge Road and east part of Front Street?

Were they all unpaved as of 1968?

A I would say so, yes.

Q So, there has been some improvement in street pavement in that area since 1968 has it not?

A It has.

Q You mentioned improvement in the lighting, too, haven't you? The lighting?

A Oh, yes, it has been some improved.

Q Now, as a matter of fact you have known Commissioner Mims for years, haven't you?

A Quite a few years.

Q You have known Mr. Doyle, also?

A Quite a few years.

Q Do you happen to know Mr. Greenough?

A Not as well as I know Mr. Doyle and Mr. Mims.

Q But you have met with Mr. Doyle for example about

traffic and other problems in the Plateau area, haven't you?

A I have.

Q You have no difficulty getting him to meet with you and consider those problems, did you?

A No, I didn't.

Q You didn't get everything you asked for necessarily, but you were able to get a meeting and consideration, weren't you?

A I was able to get the meeting.

Q Now, what was it that you asked Mr. Doyle to do that wasn't done?

A Well, there was one thing in specific that we haven't or we are but we haven't -- we have been having trouble with police protection in that area. We feel like that coverage of patrol is too large in order to give adequate protection when needed.

THE COURT:

In other words, you mean that they cover too large an area?

A Yes.

THE COURT:

You don't mean that there are too many of them out there?

A That's right.

They cover too large an area. For instance, sometimes when we call a policeman for that area he could be in what they call blackjack in Saraland avenue -- in fact I have called a number of times when my -- especially when my alarm would go off in my store and I have timed it and sometimes it takes approximately thirty minutes or more for a policeman to arrive on the scene.

MR. ARENDALL:

Now, Mr. Randolph, I don't want to interrupt your account of this, but let me ask you this. Do you happen to know how the city determines the number of patrolmen to be assigned to a given area of the city?

A I don't know that.

Q Then you do not know whether or not they keep statistics on the incidents of crime and determine the number of people that patrol that area on that basis? You don't know anything about that?

A No.

Q You just know that you are not satisfied with how long it has taken and what you consider to be an adequate coverage; isn't that right?

A Right.

Q Now, as to Mr. Mims. Have you ever met with Mr. Mims about any of these area problems that you have talked about?

A We have.

Q When you say we, you are talking about this organization that you had?

A Well, yes, I can say we or they --

Q You have had meetings with Mr. Mims before for your Plateau Progressive League was formed, didn't you?

A Oh, sure.

Q And you had access to him and consideration by him of things such as paving and street lighting and so on, haven't you?

A Yes.

Q And do you happen to know whether the fire underwriters, or whatever they are called, were the people that established the standards for location of fire hydrants?

A No, I don't know that it is required in that area.

Q Now, who is this large land owner that you refer to out there?

A Meaher.

Q Who?

A Meaher.

Q That's Mr. Gus Meaher's family, isn't it?

A Yes.

Q How many acres do they own out there?

A Well, I would say in the corporate area of Mobile

county region and this was the survey of Mobile.

THE COURT:

General planning agency authorized by whom?

MR. BLACKSHER:

State law, your Honor. These regional planning agencies took the place of what used to be councils of local government. They are authorized for planning regions which are set up here in Governor Brewer's administration and they generally have representation and get money --

THE COURT:

I just wanted to know from what source it comes.

MR. MENEFEE:

The next witness is Mr. Austin Pettaway.

AUSTIN PETTAWAY

the witness, having first been duly sworn to tell the truth, the whole truth, and nothing but the truth, took the stand and testified as follows:

DIRECT EXAMINATION

BY MR. MENEFEE:

Would the clerk hand Mr. Pettaway a copy of Plaintiff's Exhibit 91.

Mr. Pettaway, take a look at those papers there.

MR. ARENDALL:

Let me look at this Exhibit 91, also.

MR. MENEFEE:

This is Mr. Austin Pettaway. He is fifty-seven years old. He lives at 1528 Lincoln Street in Mobile. He is married and has six children. He has lived in Mobile County all of this life. He works for the postal service. Is that a correct statement, Mr. Pettaway?

A That's right.

THE COURT:

Do you live in Mobile County?

A That's right.

MR. MENEFEE:

Q Mr. Pettaway, have you and other residents of Lincoln Street been active in trying to change municipal services to other streets for drainage and such?

A Yes, I have. For more than fifteen years.

Q Have you worked actively with Reverand W. T. Smith?

A That's right.

Q I believe you mentioned to me a problem of drainage in your area?

A Drainage and we also asked for a traffic light. We haven't got a traffic light out there. The drainage is being worked on now.

Q When did they start working on this drainage?

A I would say about three weeks ago or four weeks ago.

Q During these more than fifteen years have you and Reverand Smith and others in the neighborhood that with the City Commissioners and representatives of the City government?

A That's right.

Q Now, what was the outcome of most of those meetin gs?

A Well, most of them was at this time we didn't have money for this venture. And then some time it was promised. Mr. Mims has been out and looked at our street and he promised and that was it.

Q Do you remember when Mr. Mims came out?

A No. It was three or four years ago, I think.

Q Would you describe the drainage problem to us, please?

A Well, whenever we got a heavy rain the sewer and all would back up in our yard. It would wash all of the soil out of our yard and everything. The water in the street would run up in our yard and wash our yard away.

Q That Exhibit before you, number 91, are those part of the petitions and letters that you and Reverand Smith and other residents on behalf of Lincoln Street have presented?

A That's correct.

Q You forwarded those on to the city government?

A That's right.

Q Do you think that the city government has treated Lincoln Street fairly over these fifteen years or more?

A No, I don't.

Q Why do you say that?

A Because when they say that there is no money available and other ventures were being done. Our street was still there.

Q Do you know how big a paving venture this is, how much money is involved?

A No, I don't. But they say it will cost twice as much as it would if they had gone ahead and done it when we first asked for it.

Q How long have you been making this request of the city?

A Over fifteen years.

Q If I suggested a figure of about thirty-five thousand dollars for this venture, would that sound reasonable?

A I couldn't say offhand.

MR. MENEFEE:

Your Honor, we move the admission into evidence of Plaintiff's Exhibit 91, the petitions of Lincoln Street group.

THE COURT:

A No, sir, that's not fair, that's not right.

Q You say it's not a fact that quite recently has your group been willing to stand any assessment for this work?

A I told you what we all realize that we had to pay an assessment. We realize that.

THE COURT:

Were you willing to?

THE WITNESS:

We were willing to.

MR. ARENDALL:

Q Now, was Mr. Langan sympathetic to your- problems out there?

A He came out after one of the rains and saw what kind of condition it was in.

Q But he didn't get the work done for you?

A No, he did not.

Q Are you telling us that Mr. Langan did not get that work done for you even though you were willing to stand the cost of assessment for it?

A No, he did not.

Q Did you tell us that at that time, you were willing to pay the assessments to get the work done that Mr. Langan wouldn't do it?

A No, sir, he did not do it.

THE COURT:

What he really wants to know if you are willing to pay the assessment?

THE WITNESS:

That's right. We were willing to pay the assessment.

MR. ARENDALL:

Q Mr. Pettaway, I hand you an Exhibit which has been marked as Defendant's Exhibit 81. I call your attention to the fact that the top letter on this is dated September 22, 1974, that is the juris to the Honorable Earl Joiner of the Public Works Department., City Hall.

Were you a party to that petition referred to in that letter?

A I am not sure.

Q Can I call your attention to what appears to be your signature on the second page. Is that your signature?

A That's my signature.

Q And that seeks improvement in your streets out there, doesn't it?

A That's right.

Q Now, I call your attention to a letter of November 1, 1974, from Mr. Nickel senior engineer to Mr: Joiner, in which he refers to a cost estimate of lowering the existing street and providing new jointed system, curves and gutter and

pavement estimated to cost forty-two dollars per lineal foot. Were you advised of that?

A Yes, I was.

Q That is a breakdown of how the cost is computed, is it not?

A That's right.

Q Now, I call your attention to a letter addressed to Mr. Joiner by Richard Smith, City Clerk, in which Mr. Joiner is advised that the board of commissioners have asked Mr. Joiner to tell the interested parties that the matter has been considered by the commissioners and that he, Mr. Joiner, is authorized to obtain additional information about the matter. Did Mr. Joiner tell you that?

A No.

Q Nobody from the City Hall ever told you that the commissioners had asked any one to go get additional information?

A No.

Q Then on November 7th, a letter from Mr. Richard Smith to Mr. T. K. Peevey, Public Works director.

MR. BLACKSHER:

November 7th of what year?

MR. ARENDALL:

Nineteen seventy-four.

Advising, Mr. Peevey quotes, "The board of commissioners in conference, November 5, 1974, reviewed the estimate you submitted in the amount of thirty-six thousand five hundred and sixty-six dollars to rework and lower Lincoln Street from Stone Street to Dunbar Street."

"The Commissioner requests that you advise the interested private property owners. The city will not be able to correct the situation at this time inasmuch as the monies are not available in the city budget."

Did Mr. Peevey so advise you?

A No, I didn't get that.

Q Did you understand that the question was money and all you had to do was say that we would stand in assessment and they would do it?

A No, I didn't get that understanding.

Q All right. Here is a letter dated November 13, 1974, from Mr. Joiner, of the Public Works Department addressed to Reverand Smith, he is the one you were working with?

A That's right.

Q Re: Lowering and repaving Lincoln Street.

You observe a reference there to repaving Lincoln Street?

A Yes.

Q Do you know of any reason why Mr. Joiner would have

talked about repaving if it had never been paved?

A I don't know why he stated it but it has never been paved.

Q And Mr. Joiner then did as he had been instructed to do. Referred the cost of thirty-seven thousand dollars and the unavailability of funds?

A That's right.

Q I want to call your attention to a letter dated October 27, 1975, from Richard Smith to James T. Chaplin, assistant engineer. Saying, "The board of commissioners this day and meeting with the delegation of Lincoln Street instructed you to proceed to initiate a paving improvement venture for Lincoln Street as soon as possible."

Were you informed that that action was taken?

A Yes, I was.

THE COURT:

What was that date?

MR. ARENDALL:

October 27, 1975.

THE COURT:

That was in authorization to proceed with work?

MR. ARENDALL:

Yes.

Q Now, there is a notation up in the top, Judge. Lincoln

Street paving improvement venture number one eighty initiated 1/13/76.

Now, Mr. Pettaway, I ask you again if it isn't a fact that between November of 1974 and October of 1975 and indeed only shortly before October of '75 did you people agree to send assessments for having this work done?

A I don't remember no one kicking on it. I don't remember no one kicking on the assessment.

THE COURT:

Do you remember an affirmative agreement?

THE WITNESS:

No, I don't.

MR. ARENDALL:

And you do expect to be assessed, now?

A That's right.

Q And you didn't expect to be assessed in the negotiations back at any time before that, did you?

A I did, and I think the group did.

MR. ARENDALL:

I offer this Exhibit.

Q Mr. Pettaway, you have referred to the facts that other areas in the City were paved since you started talking back in 1961 to the city commission?

A That's right.

Q And the time that you actually got it?

Do you know the circumstances under which that other paving was done? Whether it was on an assessment basis or by some dividers who were paying for it themselves or otherwise?

A No, I do not. All I saw was that the paving venture was going on.

MR. ARENDALL:

No further questions.

MR. MENEFEE:

No further questions.

MR. ARENDALL:

Judge, I overlooked the traffic lights.

Do you know what the procedure followed by people where people want traffic lights?

A No, I don t. But I was sent to Mr. Bradford.

Q It is checked into by the traffic engineer at City Hall, isn't it?

A I was sent to Mr. Bradford and Mr. Bradford is an engineer, wasn't he?

Q Right. He makes certain tests such as volume of traffic and number of wrecks and that kind of stuff to determine whether or not a traffic light should be put in .

THE COURT:

Did he advise you of those things?

THE WITNESS:

Yeah, he did.

MR. ARENDALL:

No further questions.

MR. MENEFEE:

No further questions.

THE COURT:

You may step down.

Who will you have next?

MR. MENEFEE:

Mrs. Mable Dotch .

MABLE P. DOTCH

the witness, after having first been duly sworn to tell the truth, the whole truth, and nothing but the truth, took the stand and testified as follows:

DIRECT EXAMINATION

BY MR. MENEFEE:

Q This is Mrs. Mable P. Dotch . She is sixty years old. She lives at 2529 First Avenue in the Trinity Gardens area of Mobile.

She is a widow and has fourteen children. She attended high school. She has lived in Mobile County all of her life.

your community?

A Well, we have poor drainage. At one time they did put in some drainage.

THE COURT:

What he wants you to do is tell how it affects where you live.

THE WITNESS:

Oh, its bad.

THE COURT:

Tell us what you mean by bad.

THE WITNESS:

When it rains, it gets up and floods the street. You have to wade down the street if you want to cross it. Cars get stuck. First Avenue and Jessie Street flood too, and the water stands there so that if a car on Jessie Street will drown out.

THE COURT:

Mobile has a general flooding problem. How long does the water stand after these tremendous downpours that we have?

A They stand for hours because I have a business on the corner and water comes in there and we have to close.

THE COURT:

Water comes inside the building?

A Yes.

Q What about the homes?

A Some of the people's homes, the water comes in but they don't come inside of mine.

MR. MENEFEE:

Q Is this always a problem in the Trinity Gardens area?

A Yes.

Q How is water carried away? Is there big ditches in Trinity Gardens?

A Yes, we have large ditches. And some of the ditches -- we have some pipe in some of the ditches. Some are still open with no drainage pipes in them.

Q Have you and other people in Trinity Gardens been requesting the City Commission to help you with this drainage problem?

A Yes.

Q How many years are we talking about, Mrs. Dotch? Is it going back to the fifties or the early sixties?

A Yes, its' going back a long time. Ever since we were incorporated in the City.

THE COURT:

How long has that been?

A I can't say.

Q MOre than ten years?

A I can't say exactly when.

DIRECT EXAMINATION

BY MR. MENEFEE:

Q This is Mrs. Janice M. McCamts. She is twenty-two years old. She lives at 959 Ghent Street in Maysville area of Mobile. She is single and she has attended three years of college. She has lived in Mobile all of her life.

Is that correct, Mrs. McCamts?

A Yes, it is.

Q Miss McCamts, have you been active in the neighborhood organizations dealing with, I believe, traffic and some drainage problems?

A Yes, not only that, but it's other things that are happening in the community that shouldn't be.

THE COURT:

What community is that?

A Maysville.

THE COURT:

Ma'am?

A Maysville.

THE COURT:

Now, gentlemen, can you tell me where that part of Mobile, Maysville, is?

MR. BLACKSHER:

That is behind the Ladd Stadium, roughly.

THE COURT:

That would be more or less in the southern part. All right.

MR. MENEFEE:

Q Miss McCamts would you describe the traffic problems that you have been dealing with?

A We have been having trouble with the company that has been of the area for some years. I believe it's over twenty something years. They are a hazard to the neighborhood because we have children all around there. There is a school zone right there in the neighborhood. That extends for a couple of blocks that the schools are in. This truck company is right there at the corner of my street. Therefore they use my street and other streets in the area for traffic going to their business. For loading zone and carrying out and bringing in, you know, that type of business.

Q Have you or other members of the organization attempted to contact the city government to see if they would help you alleviate this problem?

A Yes, we have. We have gotten up petitions asking for help to prevent this hazard to the community. As far as disturbance or parking area and of course speed of the trucks and the loading. The loading is so heavy that we have had this particular thing that happened. A truck that had

this accident on the street that was turning over. The children had just gotten out of school, so therefore any child could have gotten hurt and any matter. Because of this lumber that was falling over on the side in people's yards and everything.

The trucks are falling over -- I mean the lumber falling into the drainage which did happen, too. Because the drainage -- we have a problem as far as streets are overflooding because the drainage isn't properly -- whatever.

But, anyway, we have no sidewalks. When you are going to and from school or your place of business or home or to the store, you don't have anywhere to walk.

As far as the cars coming by when the streets are flooded and spill water all over every one by speeding through the streets, you know.

Q How many schools are there in your neighborhood?

A How many?

Q Are there several, would you name some?

A Yes. There are Williamson High School that is right next to a track which is a big ditch there. The railroad track is right there and it doesn't have sufficient lighting or warning of the train that is coming.

Also cars have fallen in that ditch.

It is so deep that it can hold a whole car.

Around Williamson High School, there is George

Hall Elementary High School. We have another one a couple of blocks or so the other way, west, I believe.

Q The second one you mentioned was George --

A George Hall Elementary.

Q There are quite a few children in the neighborhood in these schools?

A Yes, there are many children in the neighborhood. There are still children in the neighborhood that haven't reached the age of one year of age.

Q And in your attempts to contact the city government have you been able to suggest an alternate route?

A Yes, we have. We suggested a route. We drew to their attention what would be better for them and building. They are expanding so much. The ground that they are holding is pathetic. The houses in that area -- you can't sit on the porch. There wasn't -- there is a hazard of dust all over the furniture. You can't open doors or anything. This kind of thing is hazardous to your health as far as children as well.

Q Is that a result of large trucks stirring up the dust?

A Right. Also, at one part of the intersection in the street they put a sign there for no parking for the cars. Wherefore, their trucks can get through there and go to

their grounds.

Q I see. So, the city put up no parking signs?

A Yes, at a corner so that no cars could park where their trucks -- and those trucks make that big turn there so they can go into their ground.

The schools are right there in that area. There are children right there in that street where they are making that big turn.

They are coming all times of the night, every day, all night long. No matter whether it is the weekend or not. See, these people -- these people don't have to stay in this area.

Q You mean the company?

A Yes.

Q Is this Government Street Lumber Company that you are speaking of?

A Yes, Government Street Lumber Company and that -- there is this oil company next to it. That whole area -- it was -- it was packed off with trucks and trailers and whatever. It's a hazard because you can't see around the corners.

There is dust and there is grass growing up so high. They haven't even taken care of it. As far as -- I don't know about the city -- grounding the area -- what they call

-- but just the same. The company hasn't made any move to clear this stuff themselves. Anything that comes out of there as far as animals and snakes and this kind of thing. This is the weather that they will come out.

Q Has the city government done anything to help the situation?

A No, they haven't. The only thing that they have done -- they ignore what the traffic. Even though -- well, they have one truck that comes through approximately two weeks in a month they clean the sidewalks. Therefore, --

Q The sidewalks?

A Yes, the sidewalk. The streets are torn apart. It has a child going out playing in the streets or going out in the street they could easily get their foot caught in a hole in the street. Whereas these trucks has breaking in the streets and the City might go in and do some kind of work along in the streets and just- patch the streets up. So, the cars would have no way of running so long because you have problems with the cars having to carry them to a business to get them fixed. All of this kind of thing.

With the drainage and this kind of thing.

Q I am a little confused, Miss McCamts. Is there sidewalks in this neighborhood, or not? You said they come along and clean the sidewalks?

MORNING SESSION

July 19, 1976 9:00 o'clock, A.M.

THE COURT:

All right. Whom will the Plaintiff have?

MR. MENEFEE:

Clara Ester.

CLARA ESTER

the witness, having first been duly sworn to tell the truth, the whole truth, and nothing but the truth, took the stand and testified as follows:

DIRECT EXAMINATION

BY MR. MENEFEE:

Q This is Mrs. Clara Ester, twenty-eight years old and lives at 705 Fisher Street in Crichton. She is single. She has a B.A. Degree in elementary education and has lived in Mobile County for six and-a-half years. She is presently employed with the Dumas - Westley Center, a neighborhood service organization funded by the United Fund and the Methodist Church that operates in the Crichton neighborhood; is that a correct statement, Mrs. Ester?

A Yes, it is.

Q Mrs. Ester, in our previous conversations you have described some of the drainage problems that are common in the Crichton neighborhood, property erosion and such. Would you tell us the types of problems the neighborhoods in the Crichton neighborhood experience?

A Well, even before I came to Mobile I heard, after arriving in the City of Mobile and working in the Crichton area, that several homes were on the edge of the creek and each rain flow the erosion is like falling into the creek where homes, at this point, are getting closer and closer to the boundary point.

A lot of home owners are fearful and even people that are renting are becoming very fearful that their homes are eventually going to fall into the creek. There have been drowning situations where people in the area have rowed down the creek trying to find kids.

Other problems have been one case we worked on and reported to the Board of Health was menigitis where a family that lives above the creek, all the children were ill and the board of health indicated that it was probably from that creek area that this disease was being carried. Rats are always in the creek and mosquitoes and kids are in and out playing in it and slip and fall into it. About four years ago we talked to Mayor Mims about fencing in the creek or

putting some type of piping in to close the creek up to prevent any more drownings or diseases that the creek is creating in that community. He indicated to about twelve people, I guess, in his office that they could not baby sit by putting fences up. They couldn't send people out to watch the kids and prevent them from getting into the creek. We felt it was a minor thing to fence the area up.

Q Have there been any major improvements in the situation?

A No major improvements. They have been out to -- maybe twice to clean it in six and-a-half years.

Q You also described once to me a request, I believe, for an alternate route or rearranged route with the bus service to assist some elderly citizens in the neighborhood.

What was the problem that they faced?

A Well, the Toulminville bus comes up Mobile Street and, in the past, it used to turn on Nall Street and go to Bay Shore Avenue, coming back north and then circling back around to the Toulminville area. Senior citizens in the area would have to walk from Nall Street up at least four blocks and then up an incline to get to Springhill Avenue to catch any type of bus to take them to town. There are so many old people in the Crichton community that it became a very serious problem for them with heart conditions and other

A It is in the area of Liberty Park which is also in Crichton.

Q Does the Crichton Optimist Club have use of that park or that area?

A To my understanding they do, right.

Q In the recent past, has the Crichton Optimist Boy's Club been segregated?

A Up to about two years ago. We have had kids to go up to join because it was where we considered closer, as far as recreational facilities. They were denied the opportunity to join there, but was told if they went to Davis Avenue, they could become members of the Boy's Club there.

Q Has the Boy's Club operated a lunch program during the summer in the past?

A For at least four summers that I was aware of, yes.

Q You described to me previously the situation of black children not being able to obtain lunches on an equal basis with white children.

Would you tell me about that, please?

A Well, number one, they wouldn't be allowed in the building any way, and the lunches that were left over that

the white kids could not consume during the day, that had to be eaten or was spoiled, they would be set out on the curb. I don't know if they were set out there for the black kids to eat or set out there for garbage, but yet the black kids would easily go to that area and get them a lunch and go home.

Q This Boy's Club on Rice Street is now used as a voting center?

A Right.

Q And it serves the Trinity Gardens area, also, I believe?

A Right.

Q Would you describe some of the difficulties for citizens getting from Trinity Gardens over to the voting place at the Boy's Club on Rice Street?

A They would have to come down St. Stephens Road and possibly pick up the Toulminville, Allison bus and get off at Cotton Street and, at that point, have to walk twelve blocks or so to get there. When I have been at the polls at six- o'clock taking people from Crichton, people to vote, several people from Trinity Gardens have walked up to there at six-fifteen and they would not get the freedom to vote, because of the hour situation.

Q Prior to the Trinity Gardens citizens voting at the

Boy's Club, did they vote in their own neighborhood?

A Yes.

Q At the Trinity Gardens School?

A Right.

Q So, thereafter, would you say that it was very difficult for a citizen of Trinity Gardens, if they don't have private transportation to vote at the Boy's Club?

A I would say that it is very difficult.

Q Are there many sidewalks in the Crichton neighborhood?

A Probably you could count them on one hand. There is not a whole lot of sidewalks in the area, no.

Q Why are sidewalks important in your neighborhood?

A Number one is because kids that are growing up in that community are basically from low income families. They don't have adequate transportation to transport kids to other parks like Municipal or other parks that are, you know, surrounding them. So, the kids play in the street a great deal, which is not to any degree a safe situation.

Even Mobile Street is a very busy street. That is the street the amublance goes down, as far as going to the University Medical Center. So, the kids had to play with no place to ride bikes and they end up in the streets all the time.

I feel that it is a dangerous situation. If the

sidewalks were available, the kids would be in a little safer area. There is no basic recreation for them where they can walk comfortably to a program.

Q In a neighborhood such as Crichton is there also a good bit -- neighborhood interchange and foot traffic by the citizens?

A Yes. People walk all the time. People sit on the porch and communicate with each other. This is their livelihood. This is basically all they can afford to do.

Q Have most or all of these problems been called to the attention of the city government?

A The majority of them, yes.

Q Over a period of time, several years or more?

A I would say for the six and-a-half years I have been here.

Q What sort of response have you got?

A Well, they send someone out to clean the creek during election time. You have a lot of city trucks in the area looking around. The basic problems that have been indicated to the city have not been solved.

Recreation is still not in the Crichton community. The creek problems are basically there. They may have come out and cleaned the creek, yet the same type of situations are going on, menigitis, kids falling into the creek and

houses in danger of their homes being washed away and so the problems are still there.

Q Have you ever met with members of the City Commission?

A I have met with Mr. Mims as well as Mr. Greenough.

Q Did you have a great deal of difficulty speaking with these commissioners?

A The one occasion that I met with Mr. Mims, the difficulty was the fact that we had brought several people from the community to speak with them, and they found it a big problem to seat every body. We felt like if people could come in the room and stand that was important that they hear what he had to say about the issues that they brought to them. He did meet with us, yes.

Q You have certainly been in other parts of the City. Do you think your neighborhood has received equal treatment with white neighborhoods?

A No, I do not.

Q Would you describe the racial make-up of the Crichton neighborhood?

A I would say Crichton, at this point, is probably sixty - forty with the majority being black.

Q And are those concentrated in certain areas or particular areas of the Crichton neighborhood, the blacks?

BILL ROBERTS

the witness, after having first been duly sworn to tell the truth, the whole truth, and nothing but the truth, took the stand and testified as follows:

DIRECT EXAMINATION

BY MR. BLACKSHER:

Q State your name and address, please.

A Bill Roberts, 148 Tuscaloosa Street, Mobile.

Q How old are you, Mr. Roberts?

A Thirty-five.

Q What is your present employment?

A Vice-president of Cogburn Nursing Home.

Q How long have you resided in Mobile?

A Thirty-five years.

Q That is your whole life?

A That's right.

Q What elective office do you presently hold?

A State Senate district thirty-five.

Q That is the State of Alabama?

A That is correct.

Q Would you briefly describe your history of involvement in politics in Mobile County?

A In 1970 I was elected county wide to the Alabama

House of Representatives and in 1974 I was elected to my present position in the Alabama Senate.

Q You ran in the Democratic primary?

A That is correct.

Q Senator Roberts, you are the sponsor of a bill that is presently pending in the Senate of the legislature of Alabama that concerns city government in Mobile. What is that bill number?

A The bill number is -- you know, I forgot the bill number. We have something like thousands of bills. I really don't know, right off the top of my head, what it is.

The reason that I don't know what it is, there hasn't been a great deal of action on the bill recently. I will have to check. I really don't know what the bill number is.

Q Would you describe, please, what this bill proposes to do with the city government in Mobile?

A Well, essentially, it would provide, based upon a petition and a public referendum, it would provide the City of Mobile with a mayor-council form of government and the council would be made up of nine members. It is based on the -- essentially, the same legislation that provides the City of Birmingham with a mayor-council form of government.

Q This would be a form different from the mayor alderman form presently contained in the general laws of Alabama?

A That is correct.

Q You would have a mayor running at large, correct?

A That is correct.

Q How would the council members, the nine council members, be elected under your bill?

A Seven of the council members would be elected from districts and two of the council members would be elected at large, city wide.

Q Mr. Clerk, would you hand the witness exhibit 62, and Plaintiff's Exhibit 63, please.

May it please the Court, Plaintiff's Exhibit 63 is a summary prepared by Mobile United of a debate that occurred there on May 28, 1976, I believe; isn't that correct, Mr. Roberts?

A That is correct.

Q In which Mr. Roberts participated with Mr. Ed Thornton and Professor William J. Harkins.

Mr. Roberts.....

THE COURT:

What number is that?

MR. BLACKSHER:

Sixty-three. Would you tell the Court two reasons that you have introduced this bill?

A Well, basically, the two reasons -- the major reason is that, in my own opinion, the mayor council form of government is a better form of government. I say that after having served almost two years now as the chairman of the local government committee in the Alabama Senate. So, I have become somewhat familiar with forms of muncipal government and I think that, of course, there are advantages and disadvantages to the various forms.

In my opinion, the strongest form is the mayor-council and I think this is probably indicated by the fact that a majority of the cities in Alabama have this form of government and over the last ten years they have been moving toward this form of government and this situation also exists on a national level.

The second reason is I feel, under the present form of government, the commission form of government, the individuals or all segments of the city do not have an opportunity to be represented. So, I said at the Mobile United meeting and I repeat again that this bill will give wider representation, in my opinion, to the various segments of the city than the present form of government that we have had.

Q How would it accomplish better representation?

A Well, under the present system you have three commissioners that run city wide, that run at large, and under the mayor council you would have a mayor that would run at large and you would have at least seven councilmen that would be running from districts. I think it is quite obvious that you would have more individuals involved in municipal government than you presently have, although they would be involved at a different level than you have now.

It would be an executive - legislative situation, whereas, at the present time, you have, whichever way you want to look at it, either an executive or legislative situation. You do not have the checks and balances provided by a legislative - executive arrangement.

Q Why have you proposed that two of the council members run at large in seven districts?

A Well, basically, two reasons; one, is that I would hope that this was something that I hoped that with certain established members of the community would be -- find more acceptable, and the second reason, would be that having experienced the districts.....

THE COURT:

When you say more acceptable, you mean make it

easier to pass?

A That is correct.

THE COURT:

All right.

A The situation that we have in the legislature, we have had some difficulty in that in running from districts that the legislators have had a tendency, in some instances, to be concerned just with their particular district and the interests of their district and so I felt that by providing two councilmen, at large, that any discussion that took place on the council regarding various municipal issues that these individuals could provide some balance.

An individual, for example, with a district, concerned with a project just in his district or a situation that exists in his district, there would be at least two members on the council to provide the prospective of looking at it from a city wide point of view.

Q Was there any other city's modeled like the mayor council form that suggested this seven - two council to you, or is that your own idea?

A That is my own idea. To my knowledge, I do not know of any cities that have that arrangement.

Q Now, on the question....,

THE COURT:

To that extent, it is different from the Birmingham plan?

A That is correct, your Honor.

MR. BLACKSHER:

Q The question of why the representation was debated on this occasion at the public forum of Mobile United; is that correct?

A That is correct.

Q I believe that the person, Mr. Thornton, who was opposing your bill made the point that the present mayor, city commission form of government, protects majority control; is that correct?

A He made that statement. That is correct.

Q And in fact, I believe Mr. Thornton said that among those who favor minority rule we have only Federal judges and the present delegation from Mobile County; is that correct?

A He made that statement. That is correct.

MR. ARENDALL:

If your Honor please, aren't we getting into the rankest kind of hearsay?

THE COURT:

Well, if this is a debate before the legislature.

MR. ARENDALL:

No, sir. Before the Mobile United, a local group of citizens.

THE COURT:

Well, I think it is totally irrelevant any way.

MR. BLACKSHER:

All right.

Q Mr. Roberts, haven't you....

THE COURT:

It is argumentative. Go ahead.

MR. BLACKSHER:

Q Mr. Roberts, haven't you also said publicly, including this debate, that one of the reasons you introduced this bill was the pendency of this law suit?

A Yes. I do feel that -- I did originally introduce the bill for that reason. I intended for sometime to introduce the bill, because of the two reasons I stated earlier, but it was after that I had decided to introduce the bill that I became aware of the law suit. I did make the statement that I felt that too often in Alabama, on the State level, particularly, for example, the prisons and the mental health situation, that the legislature has not met its responsibility and in those situations the courts have moved into that area because of the lack of responsibility of the legislature.

I have stated on a number of occasions we obviously do have a problem here, in my opinion, and we do not have representation in all areas of the city and, for that reason, I introduce the bill and then I became aware of the law suit.

Q Now, Mr. Roberts, it is a fact, isn't it, that the 1964 or '65 bill or act that set up the optional form of government concerning which there was a referendum in 1973 differs from your present plan in that the former system had a weak mayor council system and also provided for the council to run at large and those are two major differences in your bill; isn't that correct?

A Those are just two, but there is no comparison except in name. There is absolutely no comparison between the bill that the legislature passed in 1965 and was voted on in '73 and the bill that I am proposing. There is absolutely no comparison.

Q Is it a fact that you have proposed that some of the council members run out of single member districts in order to provide minority groups in the city a better opportunity to be represented in the city government?

A That is correct.

Q Is it fair to say that since you have been associated with the Mobile county legislators that they have

understood that in order for blacks actively to be represented and to be able to elect candidates of their choice it would be necessary for there to be single member districts?

A Are you referring to my experience with the legislature?

Q Yes.

A Yes. When I served in the House of Representatives we ran county wide and there were ten members of the House, six of them were attorneys that lived within the immediate vicinity or the same neighborhood. Now, under the district situation, which I didn't particularly care for the plan, but nevertheless, we had districts and we have a wide range. We have an individual who is an owner of a cleaning establishment. We have a man that has been involved in service station work and auto repairs. We have, I think, a black attorney, a young white attorney, and so we have a wide range of individuals that are involved in the legislature now that wouldn't have been involved in years past. So, in that respect, legislative re-apportionment has been good, in my opinion.

Q At the end of the Mobile United debate you said that, in answer to the question were the prospects for the enactment of your bill not too good, from slim to none, but the bill right now is being held up in committee by one

senator and is that still the case, Senator Roberts?

A That is the case, to my knowledge. As you know, we have been in recess for one week and unless.....

Q That one senator is Senator Perloff?

A That is correct.

Q Has he told the delegation why he is holding the bill up?

A No. He has not, not to my knowledge.

Q Do you have any idea?

A Yes. I have some idea, but I cannot prove that.

Q It would be hearsay?

A It would be hearsay; that is correct, but I know why it is being held up.

MR. BLACKSHER:

No further questions.

THE COURT:

You may cross him.

CROSS EXAMINATION

BY MR. ARENDALL:

Q Senator, there has been some testimony here that Mr. Buskey would have beat Senator Perloff for the position in the State Senate three hundred votes that had been cast or three hundred more votes by blacks. In other words, if

governments throughout the state and perhaps the history of Mobile home government under a mayor aldermanic form, did you not?

A Yes. I centered most of my studies on the Birmingham situation and the Montgomery situation, because they were the ones most comparable with Mobile.

Q Is it fair to say that one of the big problems that you found with the mayor council form to have was that of interference by members of the council in the day to day affairs of the municipality?

A That is why I wrote the bill in the way that I did, because -- let's take, for example, the one we are all familiar with, the city of Prichard. It has a weak mayor. There are areas where councilmen can and do interfere and involve themselves in the day to day operations of the city.

Under the bill that I have proposed, even if they go or approach a department head, without first going through the mayor's office, they can be removed from office.

Q What are other differences?

A The other major difference, the council people would be elected from districts and I understand from '63 or '73, those bills, that that was at large.

Q I understood you to say, senator, that you patterned

your bill on the Birmingham bill. Does not Birmingham have a council where all the members are elected at large?

A That is correct. And I have a letter from Mayor Vann recently where he stated that this was going to be a problem for the City of Birmingham. He felt that this was definitely a strengthening of the bill to place them in districts rather than having them running at large.

Q And in either event, there is that major change from your bill and your bill in Birmingham?

A That is correct. But in Birmingham they have nine councilmen from districts.

THE COURT:

They are designated. They have residences, but have to be elected, at large?

MR. ARENDALL:

What was that? I am not clear on that.

A In Montgomery they must run from designated districts and they must live in those districts.

MR. ARENDALL:

In Birmingham they have residential requirements, all elected at large?

A That's right.

Q Two blacks in Birmingham currently serving, are they not?

A Yes.

Q Do you know the racial composition?

A It is five -- four to five whites and four blacks.

Q Has Montgomery found that this kind of districting plan has produced a five four racial block on various issues brought before the council?

A I discussed this with Mayor Robinson, who is a close friend of mine. He has the opportunity or privilege to attend the council meetings, but he cannot interfere in any way unless he called on. He has told me, with the exception of a few issues, one of which was to rename a street Martin Luther King Memorial Drive, that there has been very few problems.

Q You have recognized, senator, that there is a risk of fragmentation of a community through single member districting, do you not?

A I think that is debatable. You can make an argument for that. You can also make an argument for running at large. For me, it is very difficult to say.

Q Is it fair to say that recognizing that reasonable men may reasonably differ about whether the City Commission form is a better form than the form we would have .....

A I acknowledged that before Mobile United and other groups that that is debateable.

member of the County Commission and Ron Webster, a local business man, were they not?

A That is correct.

Q Who were the leaders in the first election?

A Gosh, it has been seven years, almost.

Q Wasn't it Mr. Webster?

A Mr. Webster, as I recall, Mr. Webster led the ticket and, in the runoff, I think I won by twelve hundred votes.

Q Did you seek black votes?

A Yes.

Q Had you, on previous occasions, been to the non-partisan voters league and sought votes for others you supported?

A Yes.

Q Since your election, have you been available to blacks and whites who have sought to speak to you about matters of concern to them?

A Yes. I have tried at all times to make myself available to anybody, black or white.

Q Have you ,in fact, have any contacts with blacks including black leaders?

A Yes, many times.

Q Could you name any particular black leader which whom you have had numerous contacts?

about how to handle things like this and I urged him to please come to me first and at least let us discuss the situation before it more or less went public.

Q Did he agree to that?

A Yes. I felt good about the meeting. I thought it was worth while and when I left I felt we had really had a meeting of the minds. However, after a period of quiet it continued as it was before.

Q You mentioned Mr. LeFlore sending copies or addressing copies to many persons, including the FBI. Has the FBI investigated that type of complaint?

A Yes. Any time a letter or request of this type gets to the FBI, the Department of Justice. it has been investigated and the FBI always conducts a full investigation of whatever the incident that they are asked to investigate is.

Q Has the FBI ever reported to you that they found substance in any of these complaints?

A There has never been a report to me by the FBI that they found evidence of police brutality in the Mobile Police Department.

Q There has been a lot of talk in this case, Mr. Doyle, and I am sure you have heard the testimony about this Diamond -- the so called alleged lynching incident.

Will you tell us when you learned about it and what happened? Give us a chronology of this.

A All right. I believe my dates are accurate, at least the time lapse, I know, is accurate. It was reported to me on Wednesday afternoon by Mr. Clint Brown, who was the attorney -- I don't know who he was representing at the time, but he called me as an attorney to report this to me.

Q Is Mr. Brown a partner in Mr. Blacksher's law firm?

THE COURT:

I will take judicial knowledge of that.

A He called me and related.....

THE COURT:

I don't know whether he is a partner or not. He is in the firm.

MR. BLACKSHER:

Let the record show he is a partner.

THE COURT:

Okay.

A He related an incident to me concerning a hanging or lynching or he described it in several different ways. It was certainly unusual and it shocked me to even hear it.

As a matter of fact, it was hard, at that time, for

me to believe that something like that could happen. Well, at that time, I said this is, of course, -- we agreed it was a matter of urgency and needed immediate attention. So, we set a meeting as early as possible the next day. This was in the afternoon of Wednesday.

So, we had a meeting on Thursday. In the meantime, Dr. Gailliard who is, as you know, connected with the N.A.A.C.P. called and expressed his concern. He had heard it and told me, at that time, that he would not be at the meeting, but nevertheless wanted to express his concern. So, we had the meeting.

Q Who was present at the meeting?

A Well, there was a number of people present, members of the non-partisan voters league was present. The District Attorney's office, the FBI, they had been notified, but, as I recall, were not present at this meeting and the chief of police and myself. I might point out that I was the only Commissioner present at this meeting. The reason for that was, and I realized at the beginning that the information that we had received was sketchy, at best, and had no specifics.

It was a police matter and was my responsibility and I thought, therefore, that I should hear the complaint in its entirety and make a determination as to how to handle it and then report it to the other Commissioners.

Q All right. What happened at the meeting?

A We went through the details of the incident in which they described to me that a young black male was arrested and that a mock lynching or hanging took place in the downtown area, generally in the vicinity of Wintzells on Conti Street.

They said that the man had been lynched and I made the remark then, "If he had been lynched, most certainly he would be dead.", and that they then -- we referred to that, after that, as an alleged happening.

Needless to say, every one present was shocked, the chief of police and myself, the District Attorney's office, the City Attorney, who was also present, and considered this a matter of utmost urgency and we immediately instructed our police people to start an investigation. This was on Thursday.

Now, on Friday, about Friday afternoon, the City Attorney, Mr. Fred Collins, called and informed me that the first information that he had gotten, the first statements that he had read that were taken from some of the officers who were named, indicated that, in fact, this had happened and that we were to get into it further.

When we have an internal investigation in the police department, we take statements from every one involved,

plus their supervisors and on down the line, and it was naturally -- it was going to be a little time consuming to get all of this information together. So, we did and we met again on Monday -- as a matter of fact, we met by way of many phone conversations all during the weekend, but on Monday we met again and, with the exception of one statement from one party we had assembled all of the information.

On Tuesday, which is our day to meet, the day that we have our conference meeting, City Commission meeting, it was then, that afternoon, and we got the last bit of information we needed to bring all of the story as we knew it in focus.

At that time, I called the other two Commissioners and, with the chief of police and the City Attorney and others, we met in my office and I detailed the incident, to the best of my knowledge, to them.

They were very shocked and upset and, to my knowledge, neither one of them had heard of the incident. I believe Mr. Greenough had said he had heard some conversation or rumours, but he had probably discounted it, but, at any rate, this was the first knowledge they had. We met then for quite a long time to determine what should be done.

At that point, we took what I considered to be immediate positive and stern action.

This was an administrative action of the police department. One man admitted that he was the person involved, who was most responsible. He was immediately terminated. Seven others were suspended for fifteen days and then the matter went into the hands of the grand jury who conducted an investigation.

The grand jury then indicted five men, including the one we had terminated and exonerated three.

Q Exonerated three of the people that you had suspended?

A Three of the people we had suspended were exonerated. I might add the suspensions -- we based the suspensions on the fact that these men had failed to report it and this is an administrative action. They were suspended for failing to report an incident of this type.

The five men were indicted by the grand jury and they are awaiting trial, at this time. The other three served out their suspensions and were put back on duty and that is -- let's see, I don't know exactly the status of those three other men, at this point, but they are back on duty at the Mobile Police Department.

But what all of this led to was what we got into after this and that was a very, very intensive investigation into not only this incident but into a number of others that

had been reported in the last, I would say, within the thirty days prior to this and our investigation was conducted personally by the chief of police in co-operation with the City Attorney and several other police officers.

It, as you know, resulted in the termination of two additional officers, plus six suspensions of varying degrees handed down to other officers. Those did not connect or those were not related to the Diamond incident.

Q Now, just to try to complete the picture, did one or more of the persons suspended, as a result of this subsequent investigation, take their cases to the County personnel board?

A Yes, a number of them have appealled.

Q Has there been any action as to any of those appeals?

A I believe one of them had a suspension reduced.

Q Didn't the papers indicate, I thought two.....

A Possibly two. I haven't kept track as closely as perhaps I should.

Q There has been some suggestion here, Mr. Doyle, that the only people in Mobile that had any concern about this Diamond occurrence were members of the black community; is that right?

A Absolutely not. There was concern expressed throughout the community from all sides. There was concern voiced

by such organizations as the League of Women Voters, to mention some -- they are not necessarily white, but they are a mixed group, the Optimist's Clubs, Mobile United, a number of organizations.

Q The Chamber of Commerce?

A The Chamber of Commerce. They made a report or had a report on it. The N.A.A.C.P. ministerial groups, both black and white, expressed concern.

I had letters of concern expressed by individuals, some black and some white, and it was a general feeling of upsetment and concern throughout the community and it was not necessarily related only to blacks.

Q Did you have any correspondence with Mr. Gary Cooper about this matter?

A Yes. I corresponded, from time to time, with Representative Cooper on a number of matters. He has easy -- we get along together and we talked about problems about his community and Mobile as a whole and he had .....

THE COURT:

Is he a black legislator?

A Yes, sir. He had expressed, in a letter expressing concern that he wrote me and outlined a few things that he thought would be of benefit to the police department and to the city as a whole. It was along the same lines of various

requests that I got from other groups.

After having received many of these inquiries, requests, you know, statements of concern and that type of thing, with some help from the -- well, from everybody involved, the chief of police, the City Attorney and the other two Commissioners, I developed a response to this which was a response designed to answer some questions and designed to assure the people that the matter was to be dealt with and that it was not going to be as some people put it, white washed. It was not going to be put under the table and that it was going to be dealt with and the City of Mobile and the Mobile Police Department was going to do everything they could to assure them that something like this would not occur again.

MR. ARENDALL:

If your Honor please, for the first time this morning I saw this statement that Mr. Doyle prepared in connection with this recent incident. It has not been exhibited to counsel for the other side.

When was this prepared?

A I had a lot of papers I was going through and I came across it.

Q It has not been exchanged. I would like to offer it as a statement.

I take it you prepared this to give out to people?

A Yes, sir. This statement was prepared to give to people who, for instance, the N.A.A.C.P. met, the ministarial groups met, Gary Cooper, Representative Cooper, received a copy of this and I had a number of copies made and it was given to the media and it was just given out generally around to the people who had an interest.

MR. ARENDALL:

I will offer it as Exhibit 85.

(Defendant's Exhibit 85 received and marked, in evidence.)

MR. ARENDALL:

Q Mr. Doyle, when you sent the information that you supplied to Mr. Cooper, did he indicate any desire to further pursue the matter?

A He indicated in the letter to me -- his letter said, in essence, that it appeared that we had the mechanism underway or proposed to address ourselves to this problem.

He called then attention to the need for increased training for police personnel in the area of human relations, but generally seemed satisfied with this statement that was given to him.

Q When all of that was developing, did you and any other member of the Commission attend any meetings other than

the ones you have mentioned?

A Yes, sir. I might add that I had numerous meetings in my office with various groups, even -- well, at any rate, there was a meeting called by the Mobile Ministerial Alliance, I believe is the name of the group, which is made up of black ministers. They had a meeting at Mount Olive Baptist Church. I can't remember exactly the day, but it was right during the first week of the -- when the incident became public.

They asked me to attend and asked Mr. Mims to attend -- asked all of us to attend. Mr. Mims and I went to Mount Olive Church one morning. I had a statement which I read and which explained to these people assembled what our position was, at the time. It was more like sort of a status report. We had just gotten this information in our hands, really, and it was sort of a status report and we went and the media were there. It was covered pretty well.

Then subsequent -- no, this must have been on a Monday because subsequent to that there was a meeting held by the N.A.A.C.P. that night.

Q Mr. Doyle, as you reflect back on that occurrence, do you consider that the city and your department and the police department reacted vigorously and effectively in connection with trying to do something about it?

A I think we did. I feel that we did everything that we could possibly do. We did it with no prodding from any particular group. We did it because we were vitally concerned. We, ourselves, were really concerned about the incident. We acted quickly, almost immediately, I would say, considering the fact that I would say we had to gather information.

We acted on Tuesday afternoon. We decided what to do. It was made public that same afternoon and the man who was terminated was terminated that day. The men who were suspended, their suspensions began that day. We acted, I think, decisively. I feel that what we did was proper and I believe that the men involved who now are awaiting trial in the Court should be given due process as everyone else and that anything further we have to say or do concerning those men would probably tend to jeopardize the litigation.

Q Now, do I understand you to say that you have formed an internal investigation unit and it is to ride herd on reports of such incidents?

A Yes. Let me say that -- oh, since Captain Wimberly left the Mobile Police Department and went with the Sheriff's Department and since- Captain Walter Levine died, we have suffered from a shortage of men in that Captain's rank. It has been our intention to establish such a unit as long as ten months ago when we requested that the

personnel board fill these existing vacancies, at least to give us a certification from which to choose people for these vacancies.

At any rate, we recognized the need to have an orderly way in which complaints of this nature were handled and that the people who made the complaints would be properly responded to and they would provide to all due haste in resolving it. We determined shortly after -- well, all of this came to a head that rather than wait on the personnel board we would go ahead and form this unit.

Q Let me interrupt you a minute. You can't just go hire somebody because you have a need for them, you have to get certification from the Mobile County personnel board?

A That is correct. In other words, if we want personnel, we have to go to them and, obviously in a position like this, as extensive as it is, you can't just pick somebody and make them an investigative officer. They have to have the background and the knowledge.

The opportunity presented itself when we discovered a former Mobile police officer retired and serving as the head of Faulkner State law enforcement school was interested in coming back to the Mobile Police Department. We talked to him and he agreed that he would and he would be the man in charge of the investigative unit. That is Major Bill

Lamy, who served some thirty odd years with the Mobile Police Department. As a matter of fact, he had the job of investigating internal matters and also citizens' complaints before he left the City of Mobile Police Department.

Major Lamy came and, as a matter of fact, he came on board after having notified his people of his intentions, he came on board on the first of July. We have not yet finished forming the unit.

We believe, at this time, that we will probably have Major Lamy and two other police officers, sworn officers, plus some secretarial help, and already he is presently involved in conducting investigations whenever they come up.

Q Do you, on occasion, Mr. Doyle, get complaints from whites as well as from blacks about alleged abuse of power by individual policemen?

A Yes. We get complaints from all citizens. The police department, as you can imagine, we have a number of complaints.

Q There has been some testimony here about the cross burnings. I believe someone has commented that you did not make any statement about that.

What was your attitude about that matter?

A Well, let me say that I deplore cross burnings. I deplore murder, rape, robbery. I deplore all of these things

them establish it, give them rules to go by, and give them some training and tell them what we thought would best help.

Q What is the community relations division?

A That is a division of the Mobile Police Department which -- well, community relations, we call it public relations, it does things such as visit schools and that type of thing, show movies and we show movies to ladies to tell them how to protect themselves and we show movies to kids to tell them about the evils of drugs and residents about how to take care of their houses and we also have a regular program of visiting high schools and interest young people in becoming -- not necessarily police officers, but at least getting into the criminal justice system. We do that on a regular basis at all of the high schools.

Q All of this done among blacks and whites and no distinction based on race?

A That's right. It makes no difference.

Q Mr. Doyle, the police department or certain of its activities insofar as employment and promotion practices are subject to the supervision of this Federal Court in the Allen case, are they not?

A That's right.

Q And you have an affirmative action planned in connection with that matter?

A That is correct.

Q And in your opinion, how is that working?

A We were directed by the court to develop a plan by which we could recruit minority people into the police department. As you know, and I will have to relate this to the activities of the Mobile County Personnel Board, because they are really the ones who are responsible with furnishing us with personnel.

We were directed, along with the personnel board, to develop a plan by which we could attract minorities into the Mobile Police Department. We certainly needed that and we needed the minority groups in the police department.

So, we developed a plan that was subsequently presented to the court and it was examined and found to be acceptable and we were told to continue or go forward with this plan, to implement this plan. I really would like to say, though, that we have not recruited blacks like we would like to recruit them to the Mobile Police Department. We haven't had as many applicants as we should and we certainly would like to have more.

Q Do you have any plans to try to improve that?

A During the incident, during the time of the incident, I was given some references of people to contact. One, in particular, I indirectly contacted to see if he would be

amenable to giving us some help and he has had a very good track record in recruiting blacks and it is my intention, at the proper time, to contact him to see if he can help us, not necessarily to change what we are doing, but to do it better or to add some inovated ideas.

Q Is the fire department integrated?

A Yes.

Q How long has that been?

A I really don't remember. It has been probably -- I think Mobile was the first fire department to have blacks on it in the State of Alabama.

Q No Court suit ever brought on that?

A No, never any court action.

Q As a matter of fact, has the Mobile Beacon published a letter of commendation in connection with the fire department?

A Well, that was in regard -- we were integrated, the Mobile fire department had blacks, but they were -- and this was back some six or seven years ago, they were in what we call black companies. There was one company all black and there were no blacks in the white companies or vice versa.

At some point in time it was my decision, along with that of the fire chief who, at the time, was Chief Douglas Melton, retired now, to as we put it, to break up the black

departments, black companies, at least, and we did that and we put the black firemen out, all around in the different companies at different places, and the Mobile Beacon wrote a nice article in the paper about how much they appreciated it.

Q The black community hadn't filed a law suit or anything of that nature?

A No, no there wasn't a law suit.

Q There had been some testimony here about the location of fire hydrants. I believe particularly about Mr. Randolph in the Plateau community.

Just briefly can you tell us whether there is any discrimination by City Hall as to where fire hydrants are located, where there are more in black communities than white or anything of that sort?

A No, sir. That is determined by the underwriters. What we do, the city of Mobile's water and sewer department, installs the fire hydrants and the City of Mobile pays for it. We go according to -- if the insurance people say one is needed here we put one there. In a new subdivision they will lay out exactly where fire hydrants will go.

Q Some indication by Mr. Randolph of lack of response at City Hall to any matter that he brought to their attention.

is located.

Q In your opinion, is the question of where a traffic light should be and should not be determined by racial factors?

A It is absolutely not.

Q Briefly, outline to us, Commissioner Doyle -- and if the Court please, I expect to go into this further with Captain Winstanly who is directly in charge of it, but I would like just a brief outline as to how the police department determines the number of policemen to be patrolling various areas and so on.

There has been some complaint by, I believe, a number of these witnesses that they don't get enough police protection in that particular area.

A Yes, sir. Well, the city is divided, at present, the city is divided into three major areas. This is as it relates to the police department.

One area is covered by what is known as the ten squad, one by the twenty squad and one by the thirty squad. The areas are divided into beats. It was about ten years ago that we had twelve beats. The city was divided into twelve -- the three areas were divided into twelve beats -- not twelve beats each, twelve beats overall. Through the years we have changed that.

We have changed from twelve to eighteen in order to give better concentration of coverage and then we went from eighteen to twenty-four and, at present, there are twenty-eight areas.

When you say how do we determine and area, it is determined by -- naturally geography has something to do with it or maybe an interstate highway or something of that type might determine one boundary but we tried to divide it where the maximum per capita coverage will be available to all of the citizens.

Every beat, as we call it, all of the twenty-eight beats, has a car, blue and white, assigned to it.

We now have weekly crime stats which are given to us as to burglaries and robberies telling us what beats are most heavily hit, whether it is the afternoon, whether it is the morning, whether it is nighttime and based on these statistics we shift people, always leaving one blue and white in each area, but we shift personnel to more or less beef up an area if there has been a particular outbreak of say house burglaries or automobile burglaries or what have you.

Q I take it then that you try to determine, as best you can, what particular areas need additional protection at any given time?

A That's right, and that is based on crime statistics.

Q I will ask you whether, in your opinion, the efforts of the police department to provide police protection for the various areas of the city are determined in any respect by racial considerations?

A No.

Q Mr. Doyle, do youconsider that since your election as City Commissioner and your re-election as such, that you have fairly represented all citizens of this area?

A I do.

Q Has that been your purpose and intent?

A Yes.

MR. ARENDALL:

No further questions.

CROSS EXAMINATION

BY MR. BLACKSHER:

Q Mr. Doyle, you feel like you have always fairly represented the particular rised interest of the black community?

A I do.

Q What are some of those particular rised interests?

A Beg your pardon?

Q What are some of the particular rised interests of the black community that you have fairly represented?

I will let you make your record. Go ahead.

MR. BLACKSHER:

Mr. LeFlore made these recommendations about a citizen's review board as a way to deal with police brutality complaints?

A I think so.

Q You disagreed with that?

A Yes. I think I disagreed with the review board because it is demoralizing to any police force.

Q Was there any other groups besides Mr. LeFlore and the NAACP who also asked for a review board?

A I presume they did. They haven't recently asked for one. They haven't asked for a review board as related to the Diamond incident.

Q What other groups have asked for a review board?

A Well, they don't necessarily call them review boards. They call them by a number of names, citizen's committees, concerned citizen's groups or what have you. But they all probably have the connotation of being a review board.

There was a request by -- let's see, I think representative Cooper requested to have a committee, although he said not a review board, but a committee. One of the ministerial groups wanted a committee which, in my judgement, could have become a police review board.

am sure the press wouldn't misquote me.

MR. BLACKSHER:

We offer this in evidence.

(Plaintiff's Exhibit 102 received and marked, in evidence.)

MR. BLACKSHER:

We have marked in pencil that statement and I want you to see if it refreshes your memory and whether you think that is accurate.

A I am sure that is accurate. He was, at that time, in regard to the City's attempt to get some law enforcement funds, some funds from the Federal government to promote good law enforcement, and Mr. LeFlore was apparently calling on the law enforcement assistance administration to withhold the funds until we did whatever it was he was seeking for us to have done and that is when I said I was sick and tired.

Q Let's talk a minute about the Diamond incident, Mr. Doyle. You said that the meeting attended by Mr. Diamond by the non-partisan voters league, the D.A. was there, the chief of police and you were the only commissioner.

Are you sure that Mr. Mims was not also there?

A I don't believe he was there. I believe I was the only commissioner there. It was a room full of people, you understand, and there were a number of members of the non-

partisan voters league there, I know, and a number of attorneys there, too.

Q You recall me being there, for instance?

A I don't recall your being there or not.

Q Mr. Brown was there?

A Yes.

Q Reverand Hope from the non-partisan voters league?

A Yes. I believe so.

Q Do you recall what Mr. Brown and that delegation asked you to do on that Thursday that the meeting was held the day after Mr. Brown had telephoned you on the phone and reported this incident?

A Well, specifically, I don't know that I recall any demand that they made or any requests that they made. The meeting, as I recall, was -- of course, it was an emotionally charged meeting, as you can imagine, and we, as a city commission and me and the police and other people, the District Attorney and others involved with the police department, were very upset about it. It was obviously, to us, the thing to do was , number one, to determine what happened and that is what we endeavored to do.

Now, it would not be proper for me, as police commissioner, to take any precipitous action based on what I had heard at that meeting. You understand this was the

first time that I had heard it except the conversation on the phone with Mr. Brown. So, it wouldn't have been proper for me to take any precipitous action, at that time, until I endeavored to find out what the facts in the case were, and that is what we did.

Q In fact, the precipitous action that that group asked you to take was to suspend officer Patrick with or without pay. In any event, to get him out of the line of duty, because they thought he was dangerous; is that right?

A That's right.

THE COURT:

Officer who? Is he the one that claimed to have made some later statement about he put the rope around the man's neck?

A Patrick was the officer who had admitted that he had done what was alleged to have been done.

THE COURT:

All right.

A Here again, we didn't know anything for a fact. This was what people were saying, their telling us. It was shocking to us to hear it.

MR. BLACKSHER:

You didn't have Officer Patrick under investigation, at that time?

A Not in regard to this instant, no.

Q Didn't you have him under investigation for some other incident?

A I don't know. I am not familiar with that. Officer Patrick, they say, you suspend Officer Patrick immediately. Well, as a matter of fact, we did take Officer Patrick out of the area in which he was in, out of the division he was in, to get him away from what might have been a situation to jeopardize him or someone else, but it certainly wouldn't have been proper for me to say, "Well, I believe what everybody is telling me. Therefore, I am going to suspend Officer Patrick immediately." That wouldn't have been fair to him or anyone. The results were that he was, in fact, terminated.

THE COURT:

When?

A On the following Tuesday afternoon.

MR. BLACKSHER:

Would the clerk show the witness Plaintiff's Exhibit 65?

I am showing you, in a group of newspaper clippings, Mr. Doyle, marked as Plaintiff's Exhibit 65, the front page of the Mobile Register, Sunday morning, March 28, 1976. The headline is "CB Theft Suspect Shot By Patrolman"?

A Right.

Q Would you look that article over, especially the parts that are underlined, and see if it refreshes your memory about Officer Patrick?

A Yes. He is the one that shot the CB thief..

Q This is the man who had two bullet wounds in each of his thighs, a single wound in his right ankle and superficial bullet wounds in each of his wrists?

A That is what is reported here in this paper.

Q And that was approximately -- well, just a matter of two or three days before this alleged lynching incident occurred, right?

A Let's see, this was Sunday morning. I guess that was the Saturday night. It apparently was about a week ahead or a week before.

Q A week before?

A Something like that. It was pretty close, right.

Q And officer Patrick was not under investigation for that shooting?

A Any time a police officer discharges his weapon he is under an automatic investigation.

Q Isn't it a fact that the delegation that attended the meeting on Thursday pointed out this incident as being related and another reason for suspending Officer Patrick immediately,

even if suspending him with pay was necessary?

A I don't recall that, but I am sure they brought that up.

Q You said that on Friday, the day after the meeting that we were talking about.....

THE COURT:

Let me get some times straight. With reference to when attorney Brown called you on Thursday, when is the alleged mock lynching to have said to have occurred?

A As I recall it was to have occurred ten days prior to that, I believe. I am not positive of that time.

THE COURT:

Isn't there something that we can agree on? Aren't there enough facts that we can establish that time by agreement?

MR. BLACKSHER:

Yes, sir.

MR. ARENDALL:

If you have a copy of the indictment, wouldn't it state what date it was?

MR. BLACKSHER:

The grand jury report, which is the front part of the Exhibit 65, says that the event erupted on the night of Mareh 28, 1976, which would be the same Saturday night.

THE COURT:

With reference to the shooting incident. All right. Well, now, let's get dates we are talking about here. What was the date of the Thursday that attorney Brown called or mentioned it?

MR. BLACKSHER:

I believe it was Wednesday, your Honor.

A That's right. Wednesday afternoon, because we met on Thursday.

THE COURT:

All right. What was that day?

MR. BLACKSHER:

The 31st of March, is that a real date?

THE COURT:

All right. That would have been three days after the alleged incident. What is the date of the story there in the newspaper?

MR. BLACKSHER:

March 28th, is the date of the paper, which means that the event occurred on March 27th.

THE COURT:

All right. Go ahead.

MR. ARENDALL:

Judge, I must say I don't think you are wrong, but

I am looking at something here that is headed news release dated April 15, '76 and it says here that Mayor Doyle received a formal detailed complaint from Mr. Diamond's attorney on Friday morning April 9th. I don't know whether that is another .....

A That probably is right, except that it wasn't Friday morning. Well, we might have received something in detail from him, then, but the meeting we had was on Thursday.

MR. BLACKSHER:

It says this, if I may read and just for the purpose of trying to get this straight.

"Police department and City attorney immediately started an investigation at 5:00 P.M. That same day the District Attorney's office and the FBI were informed and requested to conduct an investigation. On the following Tuesday, April 13, 1976, nine matters were called to the attention of the board of commissioners of the City of Mobile", and, at that time, we thought we had sufficient facts and so forth and the talk goes on. This is part of our Exhibit 75. Whether it is accurate, I don't say, but it is dated April 15th and it would hardly appear to me that there would be a news release on A pril 15th that we would be very off on these dates.

It would appear to me that the Tuesday on which Patrick was fired must have been April 13th and then.....

THE COURT:

Well, certainly we would have some record of when he was terminated, don't we? Can we establish that date and get at it backwards from that date?

A The complaint was made by phone Wednesday and the details of it was Thursday and .....

THE COURT:

All right. Let's go back at it from that date. Do some of your records indicate when he was terminated?

MR. ARENDALL:

I am looking, Judge, to see. There ought to be some newspaper articles somewhere around here that would show.

THE COURT:

Why don't you examine the City records at Noon time and report back to us. Let's go on to something else.

MR. BLACKSHER:

Mr. Doyle, you testified, didn't you, that following the revelation of the Diamond incident, you initiated or ordered a very intensive investigation of this and other matters that were before you, at that time, other complaints?

A Right.

Q Now, when you say a very intensive investigation, how

much more intensive was it than investigations you have previously conducted in response to these complaints?

A Well, for one thing, it involved the administration of polygraph examinations which the others hadn't. It also involved more interrogation of people in the community and I guess you would say when we asked an officer for a statement and he writes a statement, that is one thing, but when we actually question him at length then we went into it a little deeper trying to get at the root of all of the problems, trying to get at the root of all of the problems as regards to the number of complaints that we had.

Q You mentioned earlier that you had three major areas for patrols, the tenth squad, twenty squad, thirty squad -- what is the six hundred squad that Mr. Patrick was in?

A The six hundred squad, you know, I mentioned to that whenever we found or whenever the statistics indicated that we had a particular problem in a particular area we more or less beefed that area up. The six hundred squad was formed in order to address itself to the increasing problem of burglaries, primarily auto burglaries, which involved primarily CB radios. The squad was formed and they were not put on -- I can't get too technical about how they were deployed, but they were not assigned during a regular tour of duty.

We would take from statistics a framework of time. If we determined that the critical hours, as far as automobile burglaries were concerned, were from ten o'clock in the morning until approximately four o'clock in the afternoon, then that is the time that the squad would be on duty. It was formed particularly to address itself to the burglary problem in Mobile. It was in addition to the others.

Q When was it formed, Mr. Doyle?

A I don't know exactly. It has been back some time ago.

Q Nineteen sixty-nine?

A No, no. More recently than that. Like I said, I don't know exactly when it was formed, but I would say probably within six months, maybe, something like that, prior to this.

Q What geographical area of the city did it work in?

A It moved around, depending on these statistical data that we got every week. If the statistics show that the area needed attention and was, say, the Loop area, that is where they would be. If it shifted to Toulminville that is where it would be, or downtown, or whatever.

The deployment was dictated as to what statistics showed the need was.

Q Did the six hundred squad have any special orders concerning what kind of tactics or measures they could take?

A No. The six hundred squad was given the mission of reducing burglaries.

Q They weren't given any particular license, for example, with the use of weapons?

A Absolutely not.

Q Do you know whether, after you investigation, whether, in fact, some of the police supervisors had given this license to these officers?

A Our investigation revealed many times about instructions that had been given these men. I don't know that it would be proper for me to go into detail about that since all of these men have appealled this to the personnel board under the grievance procedure and two of them have appealled their terminations, and at the risk of jeopardizing either pro or con, I don't think it would be proper for me to comment on that.

Q Well, your testimony is that you feel like you have acted immediately and decisively in this matter?

A Absolutely as quickly as we possibly could.

Q You did say the City Attorney, Mr. Collins, confirmed, based on his interview of police officers, this alleged lynching had, in fact, taken place some four or five days before you acted to suspend Mr. Patrick?

A Mr. Collins came to me and we were all involved in

this, by this time, as you can imagine. Mr. Collins came and said to me on Friday that the information that he had, at that time, which now the information I am talking about would be statements taken from various officers, but he said the information that he had gotten so far indicated to him that it had, in fact, occurred and then our reaction to that was that well we have to get all of the information, which meant we had to take statements from every officer involved and their supervisors, too.

Q Wasn't it true that the various delegations from the black community -- that the point they were making was why can't you suspend people without even penalties attached to it first and then conduct the investigation later?

A I think that we acted properly in the way we handled it.

Q You also said, although you deplored cross burnings, you did not feel any obligation to make a public statement about them any more than you feel about burglaries or rape?

A That is correct.

Q Were you aware or weren't you aware that these cross burnings were creating particular anxiety in a large community here in Mobile?

A I might add that the majority of the cross burnings were in Mississippi or Baldwin County, but certainly an

outbreak of violence of any kind creates concern.

This kidnapping of the 26 children and burying them under ground creates concern. I was equally concerned about the cross burnings as I was about everything else.

Q For the record, now, the twenty-six children kidnapped were in California, right?

A Well, sure.

Q Would the clerk show the witness Plaintiff's Exhibit 62?

Now, this is a newspaper article from the Mobile Press Register dated Friday morning, June 25, 1976. It says that, and I am reading from the third paragraph, Mr. Doyle, "State Troopers reported at least twenty-five crosses set afire in the two southern most Alabama counties", meaning Baldwin and Mobile, correct?

A I presume that is correct. Southern most, yes.

Q "Meanwhile at least seven crosses were reported in Escambia County, Florida in front of black churches", and then the top of the next column, "Mobile Police said one cross was burned off of Avenue A on Cottage Hill Road in front of a black man's house"; were you aware of that?

A I was given a report on where they were burned. I don't recall whether it was in front of a black man's house or not.

Q Mr. O'Connor, would you show the witness Plaintiff's Exhibit 101?

Do you ever read the Mobile Beacon, Mr. Doyle?

A Not very often.

Q Well, what we have here is Plaintiff's Exhibit 101, a xerox copy of the front, and it looks like the second page of the Mobile Beacon, dated July 3, 1976. The headline is, "Cross Burnings Threatening Letters Raise Concern in Black Community", and on page two of this article, in the third column, it says, "Mobile Police Report Three Burnings and State Troopers Estimated As Many As Twenty-Five Crosses Were Burned in Mobile and Baldwin Counties".

So, even if all -- well, the balance or twenty-two of the crosses were burned in Baldwin County, at least three were burned in Mobile and perhaps more, but you said you weren't aware or were you aware that these cross burnings were creating some anxieties in the black community?

A I am aware that they created anxiety as other matters create anxiety.

Q Well, isn't it a fact, Mr. Doyle, that because of the particular constituency that elected you and keeps you in office that that would have been difficult for you to politically come out strongly about statements about cross

burnings in Mobile?

A I don't think it would make a bit of difference. My constituency, they abhor cross burnings as much as I do. I don't think that if I said I abhorred it publicly on the front page, it wouldn't make any difference. They abhor it, too.

Q You didn't think it was important enough to do that?

A That is correct.

Q You did meet, however, in the wake of the Diamond incident with a Klu Klux Klan, correct?

A They requested a meeting in my office, which was held.

Q And that was reported in the paper?

A I didn't report it. It was reported because the media were there.

Q Concerning the Mobile fire department, Mr. Doyle, what percentage of the employees of the Mobile fire department are black?

A The fire department has twenty-seven black people and four hundred and nine white.

Q Have you done any recruiting for black firemen like you have for black police officers?

A We don't have a specific program as we do for the

number two and it will establish a rating for the fire department itself.

Q Do you know when the last final report was written, Mr. Doyle?

A I am not sure. I think it was 1964. I am not sure.

Q I was going to ask you again, is it your testimony that you don't see that the black citizens or the black community in Mobile have any particular rised interests different from those of other groups?

A If you would, Mr. Blacksher, tell me just exactly what you mean by particular rised interests.

Q Well, let me ask you the question this way, are you in favor of the City of Mobile enacting a fair employment ordinance?

A We are always -- I mean, through the personnel board, equal opportunity employors.

Q I am talking about a city ordinance prohibiting discrimination by private or public employors in the city of Mobile?

A If we were actually doing it already, what is the need of an ordinance?

Q So you see no need for such an ordinance?

A Not as long as we attend to treating an employee fairly.

Q Are you in favor of the City of Mobile enacting a city ordinance making it unlawful for persons to buy residences on the basis of race?

A As long as the end is being accomplished, whether or not you have an ordinance would seem to be superfluous. If we are, in fact, allowing people to do these things. I don't see any point in having.....

Q You say we are allowing?

A I did not say that. I say as long as people are being allowed.

Q Are you aware of whether or not people are being allowed wherever they want to buy?

A I have heard absolutely no complaints.

Q Do you know whether or not there have been complaints filed in Federal Court under the federal laws?

A I don't know.

MR. BLACKSHER:

The Court can take judicial knowledge of its own records, but I know of and have handled at least eight cases. I think the Court can also take judicial notice that the Federal Fair Employment law contains a provision through which Congress has expressed a preference for local governments to enact their own Fair Employment laws to which the Federal Court must defer, if there are same.

A Let me say this, I am certainly in favor of people being hired in an equal opportunity way and being allowed to live where they please.

MR. BLACKSHER:

Are you in favor of enacting an ordinance prohibiting the burning of crosses in the City limits of Mobile?

A I think it is probably illegal to do that on public right-of-way all ready. Now, as to whether or not -- to say it is illegal to burn a cross on private property, if someone decided this, that they wanted to burn a cross or anything on their front yard and it didn't violate the environmental rules or anything, then I don't know that we should properly deny him the constitutional rights to burn whatever he pleases in his front yard.

Q What about this cross that was burned on Cottage Hill Road in front of .....

THE COURT:

I think what he is asking you is with reference to an ordinance of someone burning a cross on someone's property who is not there, is that what you are getting at?

A Yes. I am certainly in favor of prohibiting, by law, such as a cross burning that would be apt to upset the commun i ty in any way. I think if we could prohibit it by law properly without violating someone's constitution

rights, I think it should be done, yes.

MR. BLACKSHER:

When you were campaigning in 1969 -- I realize you were unopposed in '73. Therefore, I presume you didn't do much campaigning in '69 when you were campaigning for this office.

In your campaign, did you advocate fair employment opportunitites?

A I think probably I made the same general remarks that I was in favor of everyone being able to work and earn equal with others.

Q Mr. Doyle, do you disagree with all of the white and black politicians who have testified in this trial so far that a black candidate running at large in the City of Mobile.....

THE COURT:

Are you going to be with him much longer?

MR. BLACKSHER:

No, sir.

THE COURT:

The reason I say, it is twelve and we might as well let him come back after lunch. If we can finish up in five minutes or so, go ahead. Mr. Arendall, do you have rebuttal?

MR. ARENDALL:

Just for a couple of questions.

THE COURT:

Are you planning on being here this afternoon?

A I would just as soon go and come back to finish up.

THE COURT:

All right.

MR. BLACKSHER:

I was going to ask you if you agreed with the other people that have testified that a black candidate would have little or no chance winning an election running at large in the City of Mobile?

A Well, I have always said the politics is the art of the possible and if you are given certain ingredients, I believe anyone can win an election.

If you have a willing candidate and if you have enough money and if you have a program that you can sell to the people in a proper way I believe anyone can be elected to office. I will add, however, that I think both blacks and women have less chance.

Q All other things being equal, Mr. Doyle, would you personally be in favor of single member districts out of which the Commissioners or councilmen of the City of Mobile would be elected?

A I believe that the present form of government has